HOUSE RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT A REVIEW REGARDING THE PERFORMANCE OF "INCIDENTAL AND SUPPLEMENTAL" CONTRACTING WORK.

WHEREAS, it is of paramount importance to protect the public safety and welfare in any sort of construction work; and

WHEREAS, Chapter 444, Hawaii Revised Statutes (HRS), Contractors Law, is a consumer protection statute that is intended to protect the public when dealing with persons engaged in the construction industry; protect the public from incompetence, negligence, and dishonesty in those who provide construction work; and safeguard the public against unskilled workmanship; and

WHEREAS, the Contractors License Board is the state agency that is responsible for administering Chapter 444, HRS, and the regulating body for contractors who are licensed in the State and, among other things, grants licenses to contractors; adopts rules to implement Chapter 444, HRS; suspends or revokes licenses; issues informal nonbinding interpretation or declaratory rulings; and conducts contested case proceedings pursuant to Chapter 91, HRS, Administrative Procedure Law; and

WHEREAS, in construction work, a structural engineer reviews all plans (known as S plans) that deal with the structural integrity of the building, and the structural engineer must approve the plans by stamping and validating these plans; and

WHEREAS, the C-6, C-31, C-32, C-35, C-38, C-41, C-48, and C-56 specialty subcontractor's license and other similar licenses fall under the purview of a structural engineer and must meet all requirements set forth in national and international standards; and
WHEREAS, the structural engineer must ensure that subcontractors and workers have sufficient knowledge and experience to work on a construction project; and

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

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

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

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

WHEREAS, the Contractors License Board determined that:

(1) 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; and

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

WHEREAS, the Contractors License Board has attempted to pass an administrative rule to this effect; and
WHEREAS, although under Chapter 444, HRS, the Contractors License Board has the authority to administer, review, and grant contractors and subcontractors licenses, it may be more useful to have an independent agency to evaluate and review best practices regarding "supplemental and incidental" contracting work; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2018, that the Legislative 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 meet with 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 before the convening of the Regular Session of 2019; 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.