

Honolulu, Hawaii

Feb. 16

, 2006

RE: S.B. No. 3198

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Transportation and Government Operations,
to which was referred S.B. No. 3198 entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

begs leave to report as follows:

The purpose of this measure is to amend the current state
contract requirement for an entity providing design professional
services to defend the State in legal action.

Specifically, this measure:

- (1) Prohibits provisions in government procurement contracts
that require the contractor to defend the governmental
body; and
- (2) Allows government procurement contracts to require a
contractor to indemnify and hold harmless the
governmental body from the negligence, errors,
omissions, and other wrongful acts of the contractor in
the performance of the contractor's professional
services.

Your Committee received testimony in support of this measure
from the AIA Hawaii State Council; ACEC of Hawaii; American
Society of Civil Engineers; Pacific Geotechnical Engineers, Inc.;
The Limtiaco Consulting Group; Consulting Structural Hawaii, Inc.;
KAI Hawaii, Inc.; Cedric D.O. Chong & Associates, Incorporated;
Engineering Solutions, Inc.; Coalition of Hawaii Engineering and
Architectural Professionals; Hawaii Pacific Engineers, Inc.;



Austin, Tsutsumi & Associates, Inc.; Gray Hong Nojima & Associates, Inc.; and one individual. Testimony in opposition was received from the Department of Accounting and General Services, State Procurement Office, Honolulu County Budget and Fiscal Services Department, and Hawaii County Corporation Counsel. Comments were received from one individual.

This measure addresses the problems that arise from the fact that a great majority of architectural businesses are small businesses that cannot afford to absorb the unpredictable costs of defending the State against claims that could be frivolous. Testimony indicated that the current contract requirement to defend the State survives the life of the contract and runs concurrent with the life of the building, which could last for decades. This places an onerous burden upon elderly and retired architects.

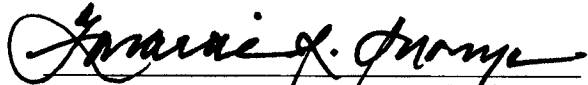
Your Committee finds that design professional service contracts are used by governmental bodies to construct public works that endure and are used by the public for a significant period of time beyond the life of these contracts. It is not uncommon for public works to survive their designers. Your Committee recognizes that design professionals have an extended period of personal liability that cannot be avoided by ways often used by other public contractors. The period of personal professional liability with respect to public works is extended by the sovereign right of the State to be free of any statute of repose.

Testimony further indicated that obtaining professional liability insurance is a problem inasmuch as traditional errors and omissions policies cover negligence caused by the insured rather than cover the likelihood of having to defend against an unknown future claim.

As affirmed by the record of votes of the members of your Committee on Transportation and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3198 and recommends that it pass Second Reading and be referred to the Committee on Judiciary and Hawaiian Affairs.



Respectfully submitted on
behalf of the members of the
Committee on Transportation and
Government Operations,


LORRAINE R. INOUE, Chair



