

STAND. COM. REP. NO.

1590

Honolulu, Hawaii

APR 05 2007

RE: H.B. No. 1518
H.D. 1
S.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 1518, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DESIGN PROFESSIONALS,"

begs leave to report as follows:

The purpose of this measure is to create a Design Claims
Conciliation Panel within the Department of Commerce and Consumer
Affairs to protect engineers, architects, surveyors and landscape
architects against frivolous lawsuits.

Your Committee received testimony in support of this measure
from the Department of Accounting and General Services (DAGS), the
American Council of Engineering Companies, the American Society of
Civil Engineers, Cedric Chong and Associates, the Coalition of
Hawaii Engineering & Architectural Professionals, Engineering
Concepts, Inc., Engineering Solutions, Inc., ECS, Inc., Fukunaga &
Associates, Gray Hong Nojima & Associates, Inc., Masa Fujioka &
Associates, MK Engineers, Ltd., Moss Engineering, Inc., Paul Louie
& Associates, Inc., and SEY Engineers. The Department of Commerce
and Consumer Affairs (DCCA) and the Consumer Lawyers of Hawaii
(CLH) provided comments.

The following concerns were stated in DCCA testimony:

*HB 1518 proposes to reestablish the Design Professional
Conciliation Panel ('DPCP') within DCCA, in an effort to
protect the design professional community from frivolous*

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lawsuits, and is based upon the provisions of Hawai'i Revised Statutes ('HRS') §671-11, et al. relating to the Medical Claims Conciliation Panel ('MCCP'). . . . [W]ithout sufficient opportunity to examine the data and rationale for reestablishing the DPCP, DCCA cannot actively support HB 1518 SD1 at this time.

By way of background, the former DPCP was created in 1976 for the same purposes as stated by HB 1518 SD1[.] . . . Although DCCA continues to support these intended purposes . . . , we would point out that historically, very few cases filed with the DPCP under the former provisions of HRS Chapter 672 actually completed the hearings process. Instead, the vast majority of cases were determined by the courts to be unsuitable for disposition by the DPCP. . . .

The provisions of former HRS §672-2.1 delineated the factors that a court could consider in determining whether a claim was unsuitable for disposition by the DPCP[.] . . . These enumerated factors evolved over the life of the DPCP and reflect the Legislature's response to pragmatic limitations of the DPCP: there are statistically very few claims that only involve the acts [or] omissions of a design professional licensed to practice under HRS Chapter 464. Most claims filed with the former DPCP involved directly or at least tangentially, the acts or omissions of individuals and entities that were not subject to the jurisdiction of the DPCP such as contractors, materials suppliers, bonding companies, etc. HB 1518 SD1 does not contain a process for the courts to determine the unsuitability of claims filed with the proposed DPCP, and thus under HB 1518 SD1, every claim would be heard by the DPCP unless the parties to a claim collectively decided to let the 12 month tolling period lapse.

Accordingly, DCCA does not have sufficient data to support a process that may not ultimately achieve the stated goals of HB 1518 SD1, and which instead, could simply delay the filing of lawsuits against design professionals for 12 months. We would also note that the former HRS Chapter 672 as well as HB 1518 SD1 would still require the filing of lawsuits against individuals and entities that are involved in the claims, but who are not design professionals licensed to practice under HRS Chapter 464.



If the Legislature believes that some form of the former DPCP is needed and would fulfill a constructive purpose for all parties to these kinds of claims, then DCCA would recommend that the former provisions of HRS Chapter 672 be reenacted, rather than a DPCP modeled on the MCCP.

Your Committee also notes concerns about the certificate of consultation required to accompany any claim, as set forth in proposed § -6, and anticipates further discussion as this measure passes through the legislative process. Of concern is whether the process may be made prohibitively costly if a certificate is required from each specialty, such as architect and engineer, even if the claim pertains to only one of the design professions.

It is the understanding of your Committee that the proponents of this measure and other stakeholders would appreciate an opportunity to consider further revisions as this measure proceeds to conference. This bill has an effective date of July 1, 2050, to encourage further discussion.

Your Committee has amended this measure by:

- (1) Adding a new subsection (b) within proposed § -3 that permits parties to a tort claim against a design professional or professionals, by unanimous agreement, to opt out of the design claim conciliation panel process;
- (2) Amending proposed § -5(b) to increase the time between the last date for filing a written response to a claim and the date for the hearing on the claim from five to fourteen days, to allow adequate time for preparation of a defense;
- (3) Changing references from the "director" to the "chairperson" throughout proposed § -5(c) to provide for various procedural matters to be handled by the chairperson of the panel rather than the director of commerce and consumer affairs;
- (4) Deleting the requirement in § -9 that the decision of the design claim conciliation be filed with the insurance commissioner, served on the representative of the design professional's liability insurance carrier,



and, as appropriate, served on the design professional's licensing board; and

- (5) Deleting the requirement in the panel's conclusions state either that the action was "actionably negligent" or "not actionably negligent" to allow apportionment of damages among parties.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1518, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1518, H.D. 1, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



