

Honolulu, Hawaii

April 30, 2009

RE: H.B. No. 1316  
H.D. 2  
S.D. 1  
C.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 1316, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to strengthen the availability of qualified consultants to highway projects, by limiting the liability of design professionals in certain tort claims relating to the maintenance and design of public highways.

Under this measure, liability for more than the design professional's pro rata share of negligence is restricted to the policy limits of the design professional's coverage for professional errors and omissions, if the design professional's degree of negligence is less than ten percent and the tort claim meets certain criteria regarding:



- (1) The contract amount for design professional services relating to the tort claim;
- (2) The amount of the design professional's gross revenue in the year or years preceding the date of the contract; and
- (3) The coverage amounts of professional errors and omissions liability insurance.

Design professionals include professional engineers, architects, surveyors, and landscape architects licensed under Chapter 464, Hawaii Revised Statutes. This bill seeks to limit the liability of design professionals in highway maintenance and design tort claims as a means of ensuring that these professionals, particularly smaller firms, can afford to work on highway projects.

Your Committee on Conference has amended this bill by:

- (1) Adding a preamble;
- (2) Providing that this measure applies:
  - (A) To tort claims involving the design, construction, and maintenance of all highways; and
  - (B) Where the design professional's degree of negligence is ten percent or less, including the vicarious liability for the negligent acts or omissions of the design professional's officers or employees;
- (3) Capping the design professional's liability under this measure at the available policy limits of professional liability coverage after reduction for prior claim payments made;
- (4) Increasing the thresholds for design professional service contract amounts covered under this bill to:
  - (A) Up to \$500,000 for design professionals with coverage for the tort claim of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate; and
  - (B) Up to \$1,000,000 for design professionals with coverage for the tort claim of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;



- (5) Replacing the criteria for design professionals' gross revenue based on the contract amount with a provision limiting the application of this bill to design professionals with a gross annual revenue of at least \$10,000,000 during any of the three calendar years immediately preceding the effective date of the contract for design professional services;
- (6) Providing that information relating to a design professional's gross revenue produced pursuant to this bill is confidential and to be used only for purposes of this measure unless otherwise ordered by the court;
- (7) Adjusting the savings clause;
- (8) Making this measure effective upon its approval; and
- (9) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 1316, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1316, H.D. 2, S.D. 1, C.D. 1.


Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE

  
\_\_\_\_\_  
ROSALYN H. BAKER, Chair

  
\_\_\_\_\_  
BRIAN T. TANIGUCHI, Co-Chair

  
\_\_\_\_\_  
ROBERT N. HERKES, Co-Chair

  
\_\_\_\_\_  
JON RIKI KARAMATSU, Co-Chair



Hawaii State Legislature

Record of Votes of a  
Conference Committee

CCR34

Bill / Concurrent Resolution No.: HB 1316, HD 2, SD 1	Date/Time: 4.30.09 1:55 pm
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
BAKER, Rosalyn H., Chr.	✓				HERKES, Robert N., Co-Chr.	X			
TANIGUCHI, Brian T., Co-Chr.	X				KARAMATSU, Jon Riki, Co-Chr.	X			
IGE, David Y.				✓	WAKAI, Glenn				X
SAKAMOTO, Norman	X				MARUMOTO, Barbara C.	✓			
SLOM, Sam	X								
<b>TOTAL</b>	4	-	-	1	<b>TOTAL</b>	3	-	-	1

A = Aye      WR = Aye with Reservations      N = Nay      E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature: 
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