

Honolulu, Hawaii

Feb 11, 2009

RE: H.B. No. 1316
H.D. 1

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

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 1316 entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

begs leave to report as follows:

The purpose of this bill is to strengthen the availability of qualified consultants to highway projects, by eliminating joint and several liability for design professionals in tort claims relating to the maintenance and design of public highways, except when the design professional's degree of negligence is at least 25 percent.

The Hawaii Section of the American Society of Civil Engineers; Coalition of Hawaii Engineering & Architectural Professionals; Austin, Tsutsumi & Associates, Inc.; Limtiaco Consulting Group, Inc.; ECS, Inc.; Gray, Hong, Nojima & Associates, Inc.; Engineering Solutions, Inc.; Brown and Caldwell; Dennis Glynn Architects, Inc.; Engineering Concepts, Inc.; Riehm Owensby Planners Architects; Arcadia Architecture, Inc.; INK ARCH, LLC; Franklin Wong & Associates, Ltd.; ControlPoint Surveying, Inc.; Atlas Engineering, LLC; KAI Hawaii, Inc.; Tanimura & Associates, Inc.; Richard Reese Designs, LLC; Urban Works, Inc.; KN Consulting Services, Inc.; Palms Hawaii Architecture; Belt Collins Hawaii; Umemoto Cassandro Design Corporation; Ernest M. Umemoto, Inc.; Fukunaga & Associates, Inc.; Kelso Architects, Inc.; Miyashiro and Associates, Inc.; and several concerned individuals testified in support of this bill. Hawaii Association



for Justice and Hawaiian Telcom opposed this measure. Hawaiian Electric Company, Hawaii Electric Light Company, and Maui Electric Company provided comments.


Design professionals include professional engineers, architects, surveyors, and landscape architects licensed under Chapter 464, Hawaii Revised Statutes. This bill seeks to limit the liability exposure 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.

However under joint and several liability, defendants with a greater ability to pay damages in tort cases involving highway maintenance and design, such as the government, design professionals, and public utilities, are susceptible to paying far more than their assigned, proportionate share of liability. Along these lines, an exemption of a certain group of "deep pocket" defendants from joint and several liability would shift greater liability exposure to other such defendants. Your Committee finds that these issues merit further consideration.

Accordingly, your Committee has amended this bill by changing its effective date to January 1, 2020, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1316, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1316, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



