

TESTIMONY BEFORE  
SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

By Joseph P. Viola  
Hawaiian Electric Company, Inc.

**10:00 a.m., April 6, 2009**

**HB 1316 HD2**  
Relating to Torts

Chair Taniguchi, Vice Chair Takamine, and members of the Committee:

My comments are presented on behalf of Hawaiian Electric Company (“HECO”) and its subsidiaries, Hawaii Electric Light Company (“HELCO”) and Maui Electric Company (MECO”). For ease of reference, I will refer to all three companies collectively as “HECO.”

HECO supports HB 1316 HD2.

For purposes of joint and several liability in highway cases, utility poles are considered part of the road design.<sup>1</sup> Thus, in highway motor vehicle accident cases involving utility poles, plaintiffs may sue HECO and the professionals that designed the highway upon which the pole is located.

Because of the way joint and several liability works, defendants who have the ability to pay -- such as the public utilities and professionals -- are at risk to pay far more than any proportionate share of liability they may be assigned. This can be particularly inequitable to public utilities in road design cases, because the public utilities do not plan, design or build the highways. Indeed, governmental rules, regulations and design play a significant role in determining where utilities may locate their poles and facilities within the highways.

HB 1316 HD2 strikes a reasonable balance among interests: If a public utility’s assigned share of liability is relatively small (less than 25%), it will pay only its assigned share. If its assigned share is more significant (25%) or more, it will be subject to joint and several liability. For this reason, HECO supports HB 1316 HD2.

Thank you for the opportunity to provide comments on this matter.

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<sup>1</sup> See Hawaii Revised Statutes § 663-10.9(4) (joint and several liability preserved in tort actions relating to highway maintenance and design, which expressly includes “actions involving . . . utility poles”).

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Hawaii Section

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April 3, 2009

Honorable Brian T. Taniguchi, Chair  
Honorable Dwight Y. Takamine, Vice Chair  
Honorable Members of the Senate Committee on Judiciary and Government Operations

## **I am testifying in support for House Bill 1316, HD2 Relating to Torts, on behalf of the Hawaii Section of the American Society of Civil Engineers.**

The American Society of Civil Engineers was established in 1852 and is the oldest professional engineering organization in the United States. The Hawaii Section of ASCE was established in 1937 and is comprised of more than 1,000 civil engineers from both the public and private sectors of our state.

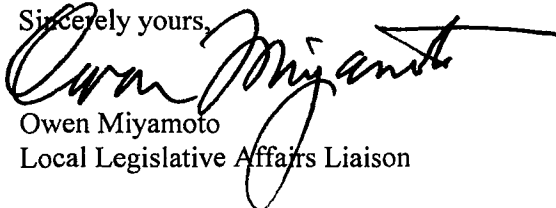
Our members regularly seal construction drawings certifying that the plans were prepared under their direction. The potential liability for these plans may be substantial and engineers can be held personally liable for their actions. The need to rationalize the legal system for collecting for damages and personal injury has been an issue at both the state and national level. While the medical practice has been receiving much of the focus for reform, the engineering design profession faces similar issues and seek relief from the unreasonable and unfair awards resulting from existing statutes.

Professional engineers are aware of their responsibility to prepare designs and supervise construction of safe, secure facilities. Should they be negligent in their work they must bear the responsibility for those faults. We believe HB 1316, which abolishes joint and several liability for design professionals except when their negligence is 25% or more will assist in achieving reform in cases where the designer should not be liable for the damages that may have occurred.

At the national level, the ASCE Board of Direction has adopted official Policy Statements on major technical, professional and educational issues of interest to the civil engineering community. Policy Statement 318 urges the passage of legislation at the state level for tort reform to reduce the filing of frivolous lawsuits. A copy of the Policy Statement is attached.

We recommend your passage of House Bill 1316, HD2. Thank you for your consideration.

Sincerely yours,



Owen Miyamoto  
Local Legislative Affairs Liaison

Attachment



## Professional Liability Reform

Approved by the Committee on Government Affairs on March 7, 2001.

Approved by the Board Policy Team on March 12, 2001.

Adopted by the Board of Direction on April 26, 2001.

### Policy

The American Society of Civil Engineers (ASCE) endorses comprehensive tort reform, that includes these elements:

- Limits on non-economic damages;
- Limits on joint and several liability;
- Limits on attorneys' contingency fees;
- Limits on application of the collateral source rule;
- Periodic payments for large awards;
- Use of alternative dispute resolution techniques;
- Reasonable access to insurance industry data;
- Reasonable statutes of limitations or repose; and,
- Use of Certificate of Merit procedures to discourage frivolous suits.

### Issue

The U.S. legal system has evolved to a point where excessive litigation, including frivolous lawsuits, is often encouraged. Moreover, findings of liability increasingly bear no relationship to the proportion of fault in a case, and astronomical damage awards for unquantifiable claims are frequently granted. The exponential growth in litigation against businesses and professionals, coupled with excessive and unreasonable jury awards, has led to dramatic increases in insurance premiums, reduced policy coverage, and even outright cancellations of professional liability insurance coverage. A growing number of professional engineers, including those with little or no history of litigation ever brought against them, have found that professional liability insurance is a substantial cost of doing business. In addition, efforts to advance innovation, new products and designs are inhibited by the current legal climate.

### Rationale

ASCE is very concerned about the adverse economic impact of the nation's litigation crisis and escalating liability insurance costs on the civil engineering profession. These adverse economic impacts effect the availability and affordability of professional liability insurance needed for the orderly and responsible conduct of business, including engineering services, in the United States.

April 3, 2009

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on Judiciary and Government Operations)**

Honorable Senators Brian Taniguchi, Chair; Dwight Y. Takamine, Vice Chair; and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

**We strongly support HB 1316, Relating to Torts.** My name is Richard Frey and I work for a Hawaii-based/Hawaii-owned engineering consulting firm. Like the majority of engineering firms in Hawaii, we are a small business. The inequitable concept of joint and several liability lacks any resemblance to justice and is a serious risk for any small firm; and we will not do work for the Department of Transportation due to that risk.

Contrary to the claims by the Hawaii Association for "Justice", this bill has nothing to do with indemnification. HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

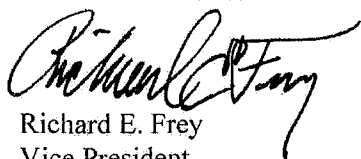
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the State has the long-term responsibility for maintenance and repair of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the State's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

ENGINEERING SOLUTIONS, INC.



Richard E. Frey  
Vice President



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of Hawaii

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April 3, 2009

EMAILED TESTIMONY TO: [JGOtestimony@Capitol.hawaii.gov](mailto:JGOtestimony@Capitol.hawaii.gov)

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and  
Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH), representing more than 70 consulting engineering firms in Hawaii, **is in strong support of HB 1316, Relating to Torts.** However, we recommend changes to the bill as shown in the attached SD1. The proposed language of SD1 makes that case that design professionals are in a unique situation, and that the public utilities should not be included in this bill.

HB 1316 attempts to bring fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. However, for most firms and for virtually all our small member firms, the professional liability risk for design professionals far outweighs their financial reward from these projects.

Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

Often before going to trial, insurance companies settle for the design professional's insurance policies limits, even when there is no clear negligence on the part of the design professional, because of the risk of large awards from juries. Design professionals have been subject to paying large settlements and in some cases have no more insurance coverage for claims on particular projects. It is important to keep in mind that our work on such projects is performed to State and Federal design standards and codes, and is reviewed and approved by government agencies.

This bill addresses our potential damages from third-party lawsuits; for example, the passenger who is injured by a drunk or speeding driver. When the responsible party's limited insurance is exhausted, it is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate the third party(ies) beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to small businesses. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to small design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically



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involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. Similarly, the public utilities have long-term responsibility for maintenance and upgrade of their systems and are not in the same position as design professionals, and should be removed from this bill.

In many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our small firms is simply out of balance with their involvement and the profits they receive. However, while we favor the full abolition of joint and several liability, we believe HB 1316 is a reasonable compromise, with the design professional still subject to joint and several liability if they are greater than 25% at fault.

Because of the risks and escalating professional liability insurance premiums associated with doing highway work, many of our firms no longer participate in highway projects. This reduces the pool of qualified consultants available to do the work, reduces innovation and quality design, and also favors large, predominately mainland firms. These large mainland firms essentially self-insure and are able to absorb more risk, but their profits go out of the state. With the upcoming anticipated increases in infrastructure funding, the damage to the State's economy from our small firms not participating is a real negative impact for the State.

HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation in other states and feel HB 1316 is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

ACECH appreciates the opportunity to express our strong support of HB 1316. We urge you to pass this bill. Please contact me if you have any questions regarding our testimony.

Kind Regards,

Janice C. Marsters  
National Director

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Alvin Zane and I work for a Hawaii-based engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

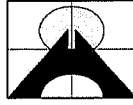
This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Our firm has made the difficult business decision to no longer participate in highway design projects because of the high risk, and we know of many other firms who have done the same. We feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Alvin Zane



**ARCADIA ARCHITECTURE, INC.**  
DESIGN PLANNING PROJECT MANAGEMENT

April 2, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members  
of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316 HD2, Relating to Torts

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Arcadia Architecture, Inc., a Hawaii-owned and -operated small business architectural firm, appreciates this opportunity to our **support of HB 1316**, Relating to Torts.

As a small business owner and design professional, my potential professional and personal liability is a concern in every project we consider. While a certain amount of risk is a reality of doing business, the current situation under joint and several liability seems very unfair, especially for small firms. This is particularly so for repairs and maintenance projects, where the claims and awards can be large, creating risks under joint and several liability that far outweigh our firm's potential profit.

It is unfair that my financial future should be so at risk because of my **minor involvement** in a public works project, especially if I am not in any way negligent. Design work on such projects is performed to design standards and codes, and is reviewed and approved by government agencies. However, under the current law, a design professional who is pulled into a claim (even frivolously), but who may be found by a jury to be only **one percent (1%) liable** for damages, could be forced to pay far more than his/her share of damages.

As a small business architectural firm, providing services on State projects, our fee is typically less than \$60,000 (profit of less than \$3,000). Clearly, the State and its citizens benefit far more than the design professional by our services on these projects, and some protection for small business design professionals is warranted.

Even without going to trial, insurance companies often settle for the design professional's insurance policy limits. This drives up the cost of insurance for all of us, **currently a staggering 3% of gross revenues** for a typical small design firm.

**HB 1316** provides for more fairness in allocation of risk, but certainly does not allow us to escape our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to



joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

We feel that fear on the part of small business design professionals limits the available pool of highly qualified consultants available to conduct State projects. With the many projects anticipated, the impact of having small business firms decline to work for the State is to have this work go to large, predominately mainland firms, who choose to essentially self-insure and are able to absorb more risk, but who take their profits out of the state.

We also feel that fear limits the design creativity that we will consider using on State projects.

We appreciate the continuing efforts of your committee and the members of the Senate to assist small businesses in Hawaii.

Thank you for your assistance on this important matter.

Sincerely, ARCADIA  
ARCHITECTURE, INC.

A handwritten signature in black ink, appearing to read "Joseph K.M. Chan", followed by a horizontal line extending to the right.

Joseph K.M. Chan, Vice President

April 3, 2009

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Honorable Senators Brian T. Taniguchi; Chair, Dwight Y. Takamine, Vice Chair; and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Myron Nomura and I am an owner-partner of a local small business engineering consulting firm of 20 people. I am in **strong support of HB 1316, Relating to Torts**. I had written you before to request that your Committee hear this Tort Reform Bill, and I sincerely thank you for doing so.

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

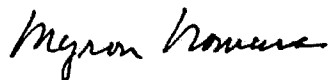
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, our deductible is high (>\$50,000) and the costs of defense are crippling to our business, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Engineering Concepts, Inc. has made the difficult business decision to no longer participate in highway design projects because of the high risk, and we know of many other firms who have done the same. We feel that this situation damages the State as fewer qualified local professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,



Myron Nomura  
President



**Gray • Hong • Nojima & Associates, Inc.**  
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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Rusty Bungcayao and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

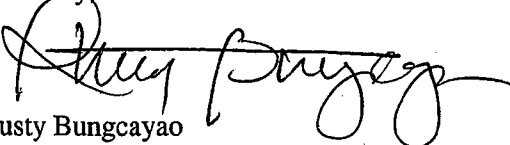
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

  
Rusty Bungcayao



**Gray • Hong • Nojima & Associates, Inc.**  
CONSULTING ENGINEERS

Daniel S.C. Hong, PE  
Michael H. Nojima, PE, LEED AP  
Sheryl E. Nojima, PhD, PE  
Paul T. Matsuda, PE, LEED AP  
Rusty B. Bungcayao  
Gavin Y. Masaki, PE

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**email@grayhongnojima.com**

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Guy Fukushima and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**


HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,



Guy Fukushima



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CONSULTING ENGINEERS

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**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Joey Gomez and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

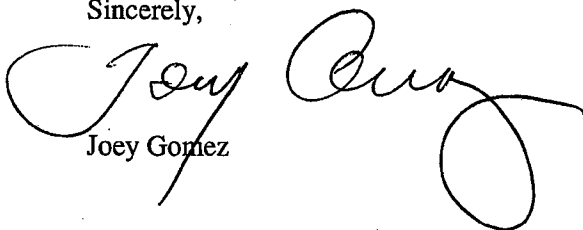
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

  
Joey Gomez



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CONSULTING ENGINEERS

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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Lois Konishi and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Lois Konishi



**Gray • Hong • Nojima & Associates, Inc.**  
CONSULTING ENGINEERS

Daniel S.C. Hong, PE  
Michael H. Nojima, PE, LEED AP  
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April 3, 2009

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**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Michael Nojima, Senior Vice President of Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Michael Nojima



**Gray • Hong • Nojima & Associates, Inc.**  
CONSULTING ENGINEERS

Daniel S. C. Hong, PE  
Michael H. Nojima, PE, LEED AP  
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April 3, 2009

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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Toby Hanzawa and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Toby Hanzawa





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Daniel S.C. Hong, PE  
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April 3, 2009

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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Jenni Wong and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

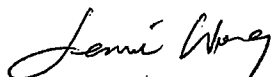
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

  
Jenni Wong



**Gray • Hong • Nojima & Associates, Inc.**  
CONSULTING ENGINEERS

Daniel S.C. Hong, PE  
Michael H. Nojima, PE, LEED AP  
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**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Paul Matsuda, Vice President of Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Paul Matsuda



**Gray • Hong • Nojima & Associates, Inc.**  
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Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Sheryl Nojima, President of Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Sheryl Nojima



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April 3, 2009

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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Gavin Masaki and I work for Gray, Hong, Nojima & Associates, Inc. a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Gavin Masaki

April 3, 2009  
09A-114

**EMAILED TESTIMONY TO:**  
[JGOtestimony@Capitol.hawaii.gov](mailto:JGOtestimony@Capitol.hawaii.gov)

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Cheryl Palesh and I work for a Hawaii-based engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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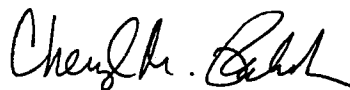
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We find that the existing tort situation damages the State as qualified professional firms are making the difficult business decision to no longer participate in highway design projects because of the high risk on these projects. Such decisions result in increases in costs and time for design.

I appreciate the opportunity to express my strong support of HB 1316 and urge you to pass this bill.

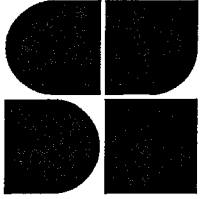
Very truly yours,

BELT COLLINS HAWAII LTD.



Cheryl M. Palesh, P.E., LEED AP  
Vice President

1916 Young Street • 2<sup>nd</sup> Floor  
Honolulu, HI 96826  
PH (808) 942-9100  
FAX (808) 942-1899



SHIGEMURA, LAU, SAKANASHI, HIGUCHI & ASSOCIATES, INC.

April 3, 2009

Howard K.C. Lau  
Craig H. Sakanashi  
Wayne K. Higuchi  
Beverly Ishii-Nakayama

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

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Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Wayne Higuchi and I work for Shigemura, Lau, Sakanashi, Higuchi & Associates, Inc., a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely yours,

Wayne K. Higuchi, S.E.  
Principal



THE LIMTIACO CONSULTING GROUP  
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

The Limtiaco Consulting Group, Inc., a Hawaii-owned small business engineering firm, appreciates this opportunity to **support HB 1316, Relating to Torts.**

As a small business owner and design professional, every project has the potential to impact my professional and personal livelihood, not to mention that of my employees and subconsultants. While risk is a reality of business, the current joint and several liability conditions are unfair particularly when considering negligence is not necessary for risk exposure. How receptive would you be to pay damages when it wasn't your fault?

Under current law, a design professional who is pulled into a claim (even frivolously) and is found by a jury to be only one percent (1%) liable for damages could be forced to pay far more in damages. Example: say a project is worth \$50,000 (with a potential profit of only \$5,000). If the engineer is found to be only 1% liable for a claim, she/he could be forced to pay \$1,000,000 in damages. In most instances, liability insurance kicks in, but not without consequences: higher premiums every year thereafter, non-billable time, etc.

HB 1316 promotes fairness in risk allocation, but HB 1316 does not eliminate liability from design professionals.

This bill will improve our business climate and will result in job growth, particularly with the many small business that constitute a large portion of Hawaii's engineering industry.

Thank you for the opportunity to testify in strong support of HB 1316.

Respectfully,  
*The Limtiaco Consulting Group, Inc.*

John H. Katahira  
Principal

April 3, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Don Shaw and I'm architect and planner. Although I personally am not involved in any highway design work, I **strongly support HB 1316, Relating to Torts**.

I appreciate the opportunity to express my strong support of HB 1316 and urge you to pass this bill.

Sincerely,

*Don Shaw AIA*



April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Kenneth Ishizaki and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

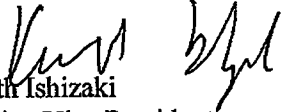
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Engineering Concepts, Inc. has made the difficult business decision to no longer participate in highway design projects because of the high risk, and we know of many other firms who have done the same. We feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,

  
Kenneth Ishizaki  
Executive Vice President

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Craig Arakaki and I am owner-partner of a local small business engineering consulting firm of 20 people. I am in **strong support of HB 1316, Relating to Torts**. I had written to you before requesting that your Committee hear this Tort reform bill, and sincerely thank you for doing so.

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

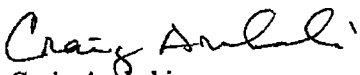
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,

  
Craig Arakaki  
Vice President

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Tieshi Huang and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

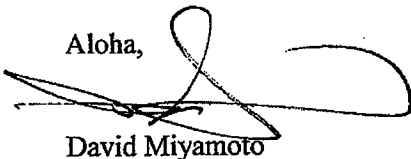
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Engineering Concepts, Inc. has made the difficult business decision to no longer participate in highway design projects because of the high risk, and we know of many other firms who have done the same. We feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,



David Miyamoto

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Conrad Higashionna and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,



Conrad Higashionna

April 3, 2009

EMAILED TESTIMONY TO: JG0testimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is June Tang and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.


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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,

  
June Tang

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Douglas Yamamoto and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.


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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,

  
Douglas Yamamoto

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Anna Lee and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

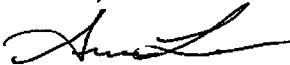
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,



Anna Lee

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Doraine Young and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

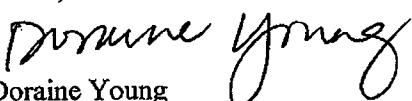
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,

  
Doraine Young



April 3, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Tieshi Huang and I work for Engineering Concepts, Inc., a local small business engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

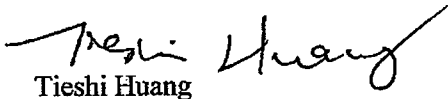
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We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,

  
Tieshi Huang

1099 Alakea Street  
Suite 2400  
Honolulu, HI 96813  
Tel: (808) 523-8499  
Fax: (808) 533-0226



April 3, 2009

EMAILED TESTIMONY TO: [JGOTestimony@Capitol.hawaii.gov](mailto:JGOTestimony@Capitol.hawaii.gov)

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on Judiciary and Government Operations)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair,  
and Members of the Senate Committee on Judiciary and Government Operations

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Brown and Caldwell, a national engineering firm with offices in Hawaii, appreciates  
this opportunity to express our **support of HB 1316 HD2, Relating to Torts.**

As a design professional, my potential professional and personal liability is  
critically important in every project I consider. While a certain amount of risk is a  
reality of doing business, the current situation under joint and several liability  
seems very unfair. This is particularly so for lawsuits related to the design of public  
highways, where the claims and awards can be large, creating risks under joint and  
several liability that far outweigh our firm's potential rewards.

It is unfair that my personal and my company's financial future should be so at risk  
because of any minor involvement in a public works project, especially if I am not  
in any way negligent. Engineering work on public works projects is performed to  
State and Federal design standards and codes, and is reviewed and approved by  
government agencies. However, under the current law, a design professional who  
is drawn into a claim (even frivolously), but who may be found by a jury to be only  
one percent (1%) liable for damages in a lawsuit related to a highway accident,  
could be forced to pay far more than their share of damages.

We were recently part of an engineering team that was selected by the State  
Department of Transportation (DOT) Highways Division to provide design services  
for highway projects. However due to our concern with the potential liability costs  
in undertaking the work in a subconsultant role in relation to the small fees and  
profits, we elected to withdraw from providing engineering services. We are aware  
of other engineering firms that have also decided to not pursue work with DOT  
Highways Division due to the impact of current regulations that exposes a  
consultant to unfair liability costs.

We feel that fear on the part of engineering design professionals limits the available pool of highly qualified consultants available to conduct State projects. With the many infrastructure projects anticipated, the impact of having engineering firms decline to work for the DOT is that the design and construction of projects will be delayed, and that the best service may not be available to public.

HB 1316 HD2 provides for more fairness in allocation of risk, but certainly does not allow us to escape our responsibilities. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and would not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply and the public's interests would be protected.

We appreciate the continuing efforts of your committee and the members of the Senate to assist businesses in Hawaii. Thank you for the opportunity to testify in support of HB 1316 HD2.

Sincerely,

Brown and Caldwell

A handwritten signature in black ink, appearing to read 'D. Lee', with a large, stylized flourish at the end.

Douglas Lee, P.E.  
Executive Engineer

# *Riehm Owensby Planners Architects*

P.O. Box 390747, Kailua-Kona, Hawaii 96739, Tel. 808.322.6115. Fax 808.322.3391

April 3, 2009

**Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair,  
and Members of the Senate Committee on Commerce and Consumer Protection**

**Subject: HB 1316 HD2, Relating to Torts**

**D**ear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Michael J. Riehm, A.I.A. and I am an owner of a Hawaii based architectural and planning firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,



Michael J. Riehm, A.I.A.



1132 Bishop Street, Suite 1003  
Honolulu, Hawaii 96813-2830  
Phone: (808) 524-3771 Fax: (808) 538-0445

April 4, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENTAL OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Roy Abe and I am a vice president with HDR|Hawaii Pacific Engineers, Inc., a local consulting engineering office of the HDR Inc. I would like to express my **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a much needed measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

Several years ago, our firm's insurance paid out a claim of approximately three-quarters of a million dollars in a case involving a one-car accident on the H-1 freeway. One alleged cause of the accident was that the white lines on the freeway were not painted exactly as indicated on the plans by the contractor. Investigations clearly showed that the lines were not the cause of the accident, but the insurance company was compelled to settle to avoid a potentially larger award to the injured party in a jury trial.

It is clearly unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence.

The increased liability to design professionals and the reduced number of design consultants willing to perform high-liability work due to unfair distribution of risk ultimately hurts the taxpayers and general public through higher costs for design services.

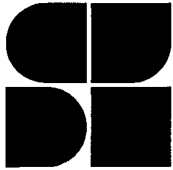
HB 1316 provides for improved fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

I appreciate the opportunity to express my strong support of HB 1316 and urge you to pass this bill.

Sincerely,  
HDR|Hawaii Pacific Engineers, Inc.

A handwritten signature in black ink that reads 'Roy K. Abe'. The signature is written in a cursive, flowing style.

Roy K. Abe, P.E.  
Vice President



SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.  
CONSULTING STRUCTURAL ENGINEERS

April 5, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Shigemura, Lau, Sakanashi, Higuchi is a locally owned and managed structural engineering firm committed to continuously improving the engineering profession and promoting high professional standards. Our firm is a member of the American Council of Engineering Companies of Hawaii (ACECH) and is an active member of various local professional organizations. We **strongly support HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

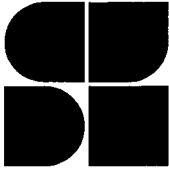
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We are typically involved for a small window of only one or two years, while the State has the long-term responsibility for maintenance and repair of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the State's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

HB 1316 provides for more fairness in allocation of risk. We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,  
Shigemura, Lau, Sakanashi, Higuchi

Howard K.C. Lau, P.E.  
President



SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.  
CONSULTING STRUCTURAL ENGINEERS

April 5, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

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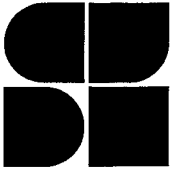
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HB 1316 provides for more fairness in allocation of risk. We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,  
Shigemura, Lau, Sakanashi, Higuchi

Craig H. Sakanashi, P.E.  
Vice-President



SHIGEMURA, LAU, SAKANASHI, HIGUCHI AND ASSOCIATES, INC.  
CONSULTING STRUCTURAL ENGINEERS

April 5, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Shigemura, Lau, Sakanashi, Higuchi is a locally owned and managed structural engineering firm committed to continuously improving the engineering profession and promoting high professional standards. Our firm is a member of the American Council of Engineering Companies of Hawaii (ACECH) and is an active member of various local professional organizations. **We strongly support HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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HB 1316 provides for more fairness in allocation of risk. We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,  
Shigemura, Lau, Sakanashi, Higuchi

Beverly Ishii-Nakayama, P.E., Principal



TO: Senate Judiciary and Government Operations Committee  
Senator Brian Taniguchi, Chair

From: Jackie Mishler, RN, BSN, PCCN,  
Telephone: (808) 878-8987

Re: HB 1379 HD1 SD 1, Physicians Orders for Life Sustaining Treatment (POLST)  
Decision-Making on Monday April 6, 2009 10:00 AM

Honorable Senator Taniguchi,

Thank you for this opportunity to **express serious reservations** about a bill I would otherwise not oppose. The objections raised in these comments are in the interest of improving this legislation not in arguing against the need for it. Unfortunately, HB1379 can have serious, unintended consequences as written.

Please consider:

- Any order not to provide full emergency care should be unambiguous and clearly and deliberately made.
- In the circumstances dealt with by the bill a **non-designated surrogate** should not have the power to sign the form in question authorizing DNR (do not resuscitate) orders, withholding antibiotics, withholding food and fluids, etc.
- The legislation is being approved before the key Orders form is issued by the DOH. This creates the potential problem that the Orders form may not fully reflect the intention of the legislation but may be implemented without further comment.
- There is no legislative oversight in this bill. While this may reflect the fact that the bill's proponents are known and trusted, this legislation will be used in circumstances we cannot foresee. In a life-and-death matter some oversight and review seems appropriate.
- The effect of legislation should include that the vulnerable not receive less protection than they do now.

A **non-designated surrogate** is a surrogate decision maker that was never chosen by the patient. This legislation as written creates a new situation where full decision-making authority can be granted to someone unknown to the patient. While this might work out fine in many cases, it presents clear potential for abuse.

Allowing non-designated surrogates authority to act on behalf of incapacitated patients is a problem that casts a shadow over this entire legislation. It results in the vulnerable being afforded less protection in this bill than under current law.

Why is that the case? It is because this bill provides for pre-hospital DNR orders. A hospital has numerous safeguards in place-- by virtue of its internal procedures, State and Federal oversight, and the fact that any DNR order has to be authorized by a physician recognized and awarded privileges by the hospital. This bill unwittingly casts aside all of these internal and external safeguards provided by the healthcare setting.

This legislation allows a "surrogate," who could be a next door neighbor, to go to the DOH, fill out a form, and sign someone up for a DNR order with

- 1) NO proof the patient is incapable of making medical decisions
- 2) NO proof of surrogacy except a statement they signed themselves
- 3) NO witness to the signature or witness who states he knows who the person is; and
- 4) NO protective language that would ensure surrogate or witnesses do not have an interest in the patient's estate.

This is an unprecedented and uncontrolled situation. One can argue that most people wouldn't do anything untoward. But hospitals have accrued safeguards over the years precisely because unexpected and untoward things happen.

Important safeguards provided in the Uniform Health Care Decisions Act Modified (UHCDA(M)) are missing. Hawaii's mechanism for selecting surrogates is a piece of paper that is filled out by the surrogate stating how they came to be selected by the consensus of interested parties or how they came to select themselves to be the surrogate. When this happens in a hospital or care home there is oversight by the physician, social worker, nurses and other caregivers. Out of a hospital setting, there is none of this oversight. With this proposal to expand surrogate authority to pre-hospital DNR orders, we are in uncharted waters and great care needs to be taken.

Proponents may feel they can adequately address these concerns but how and where? Without the safeguards integral to an in-hospital setting, legislative oversight is needed as part of the bill.

While it may not be the intent of this legislation, this bill allows a person to walk into the DOH with a piece of paper, filled out at home, containing purported witnesses' signatures, and declaring themselves to be the surrogate for a patient identified only by the name on the paper. This situation may not be likely; however, it is not only possible, it would be completely legal under the provisions of this bill.

The bill can be corrected simply.

On page 4, line 4--- Change the word 'or' to 'and'

Change line 5 to read (B) Has specifically designated the surrogate decision-maker that will be executing the form.

If it isn't possible to exempt the non-designated surrogate from signing this document **at the very least** the legislation should propose a more formal surrogate designation process before we lose all patient protection.

Legislation granting power of life and death must be looked at from a different perspective than what is immediately in front of us. What are the unintended consequences? That is the question the committee should weigh. What happens five years from now? The legislation will be an unexamined part of the law. There will be no accountability for the actions of any surrogate, well-intentioned or not. At the very least, we want to avoid an interested party who stands to inherit the estate telling EMS personnel not to resuscitate a patient.

Thank you for your consideration.

**Should you want more detailed suggestions for changes in wording in the legislation and the reasons behind the recommendations for these changes, please refer to the following two pages.**

There are other points at which the legislation can be improved. My testimony underscored the main objections. In making these further suggestions the primary interest is to avoid having the vulnerable receive less protection than they have now.

- Eliminate the words "or a health care provider" From line 21 and line 4.

Page 4, line 21, through page 5, line 5 basically says that someone other than the physician (a health care provider ---defined as being an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of the individual's business or profession)--- can explain and prepare the form for the patient. Is there any medical physician order anywhere that is not written, signed, explained to the patient by the physician? I don't think so. Physicians write orders based upon examination and consultation with the patient. It would be extremely important for them to do this with regards to such sensitive issues as DNR (Do Not Resuscitate) orders, withholding of antibiotics, withholding of food and fluids, and similar life-critical decisions. For instance, why would we have a nurse's aide explain the form to a patient for signature? Does the aide know the medical treatment implications for that specific patient when she explains? Would a nurse or social worker?

- Eliminate the words "medically ineffective health care." These are unnecessary, unclear, and contentious.

Page 5, lines 10-13 state that compliance shall not be required if the orders on the form request medically ineffective health care or health care that is contrary to generally accepted health care standards. Using the test of "generally accepted health care standards" makes sense. It is understood in the medical community. What is "medically ineffective health care" and who will judge it? Some treatments are medical decisions and don't involve a patient decision and would be covered under generally accepted health care standards. Introducing an ambiguous and potentially contested phrase like "medically ineffective health care" may sound useful, but it creates a situation where a patient's choice to have a certain treatment can be trumped by someone else's opinion - without any review - that the treatment would be ineffective. It is an empty choice if it can be overruled without consent or review.

- Change the wording to say that anyone who has authority to sign a form may revoke the form at any time and in any manner that communicates the intent to revoke.

Page 5, Line 14. Why can a patient or a surrogate (if the patient doesn't have capacity) fill out or change a form but only a patient with capacity can revoke one? If we assume surrogates are operating in the patient's best interest why couldn't they revoke the form if the patient's circumstances change? If we agree a patient can designate someone to make decisions for her or him, why are we now limiting that authority? This is inconsistent.

The three changes recommended above would strengthen the bill. These can be combined with the recommendation to restrict the role of the non-designated surrogate. These changes together would largely correct the problems in the bill. To summarize the recommendation regarding the problems created by the authorization of non-designated surrogates, please consider the following three distinct options:

- Deleting surrogates from the legislation altogether; or
- Deleting non-designated surrogates from the legislation; or
- Defining the formal, legal process for obtaining surrogacy explicitly and requiring the document in question be notarized or for at least one of the witnesses not to have an interest in the estate.

The objections in this testimony are not an effort to derail the substantive intention of the bill. The EMS providers have a quandary and there is no objection to a document being used instead of or in addition to a bracelet for those patients who choose comfort care rather than resuscitation. There is no objection to this document following a patient to a health care facility. The problems this testimony seeks to highlight are those that occur outside the health care setting which is the environment this bill seeks to address. This legislation proposes to take a law grounded in the structured environment of the healthcare institution and transport it to the pre-hospital setting where multiple levels of oversight and safeguards, which we may take for granted, simply do not exist.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 06, 2009 8:18 AM  
**To:** JGO Testimony  
**Cc:** refrey2001@yahoo.com  
**Subject:** Testimony for HB1316 on 4/6/2009 10:00:00 AM

Testimony for JGO 4/6/2009 10:00:00 AM HB1316

Conference room: 016  
Testifier position: support  
Testifier will be present: Yes  
Submitted by: Engineering Solutions Inc  
Organization:  
Address:  
Phone:  
E-mail: [refrey2001@yahoo.com](mailto:refrey2001@yahoo.com)  
Submitted on: 4/6/2009

Comments:

April 6, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is James Kwong and I am a part owner of a Hawaii owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a degree of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply both unrealistic and unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. Upon erosion of the professional liability insurance, the amount of available insurance will diminish. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Our firm has made the difficult business decision to not participate in highway design projects because of the high risk unless there are fair and reasonable negotiated terms and conditions. We feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.



James Kwong, Ph.D., P.E.

---

**From:** David Bills [dbills@billsengineering.com]  
**Sent:** Monday, April 06, 2009 8:27 AM  
**To:** JGO Testimony  
**Subject:** HB 1316 HD2, Relating to Torts - Hearing Date: Monday, April 6, 2009 - 10:00 a.m. - Conference Room 016

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is David B. Bills and I am the president of a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

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This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Our firm has made the difficult business decision to no longer participate in highway design projects because of the high risk, and we know of many other firms who have done the same. We feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

*David B. Bills*  
Bills Engineering Inc.  
1124 Fort Street Mall  
Suite 200  
Honolulu, HI 96813-2715  
Phone: 808.792.2022  
FAX: 808.792.2033



## **ECS, INC.**

615 Piikoi Street, Suite 207  
Honolulu, Hawaii 96814  
(808) 591-8181 Fax: (808) 591-9098

April 4, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Lennox Nishimura and I am the president of a small, Hawaii-owned electrical engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (ours is \$50,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Our firm is evaluating a difficult business decision to minimize or perhaps even not participate in future highway design projects because of the high risk. Many other firms are likely doing the same. We feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Lennox K. Nishimura, P.E., FACEC  
President  
ECS, Inc.





**Pacific Geotechnical Engineers, Inc.**

*Soils & Foundation Engineering Consultants*

94-417 Akoki Street  
Waipahu, Hawaii 96797  
Telephone: (808) 678-8024  
Facsimile: (808) 678-8722  
Email: [pge@pacificgeotechnical.com](mailto:pge@pacificgeotechnical.com)

April 4, 2009

EMAILED TESTIMONY TO: [JGOTestimony@Capitol.hawaii.gov](mailto:JGOTestimony@Capitol.hawaii.gov)

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Pacific Geotechnical Engineers, Inc. is a Hawaii-owned and managed geotechnical engineering consulting firm. As a small business firm in Hawaii, we are faced with numerous business challenges, including onerous tort laws, increasing insurance costs, and the current economic conditions that make it even more difficult for firms like ourselves to survive.

**We strongly support HB1316, Relating to Torts.** This bill addresses a major problem with joint and several liability for design professionals who have worked on highway projects. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages. Even when the primary cause of the accident was due to the plaintiff's negligence, the design professional and their insurance company have had to pay large settlements that in some cases have exhausted a design professional's liability insurance policy.

As our highways and freeways become more congested by the day, the risk of accidents involving injury or death will increase at an alarming rate. Because of these conditions and the onerous joint and several liability provisions in the current tort law, our firm has turned down numerous highway contracts. The risk of doing highway or freeway work is much too great for a small business like our firm. One claim could jeopardize the existence of our firm and the livelihood of our employees and their families.

Thank you for an opportunity to express our strong support of HB1316. We urge you to pass this bill.

Sincerely,

Pacific Geotechnical Engineers, Inc.

Glen Y.F. Lau, P.E.  
President

**KELSO ARCHITECTS inc.** kelso@hawaii.rr.com  
25 South Kalaheo Avenue, Kailua, Hawaii 96734 808-262-0006 Fax: 808-263-4864

April 5, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Michael Kelso and I work for a or Hawaii-owned architectural design consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the State has the long-term responsibility for maintenance and repair of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the State's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Kelso Architects, inc.  
By Its President



Michael Kelso

**COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL  
PROFESSIONALS**

FAX: 586-6659

Email: JGOTestimony@Capitol.hawaii.gov

Hearing Date: Monday, April 6, 2009, 10:00 am, CR 016

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice  
Chair and Members of Senate Committee on Judiciary and Government  
Operations

**Subject: HB 1316, HD2 - Relating to Torts**

Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; American Institute of Architects; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers.

Our coalition is in STRONG Support of HB 1316, HD2 Relating to Torts. This bill addresses a specific problem area for design professionals: joint and several liability relating to highway accidents. Under current tort law design professionals and contractors have been the primary targets for any and all highway accidents. Design professionals involved in the design or construction phase services have had to pay up to the full amount of their liability insurance policies in mediated settlements. Hawaii's current Joint and Several Law requires Design Professionals (with no or very small percentage responsibility for the cause of the accident) to pay out up to our full insurance typically \$1 million, plus attorney costs for our defense and the private attorney costs for the defense of the State Department of Transportation (DOT).

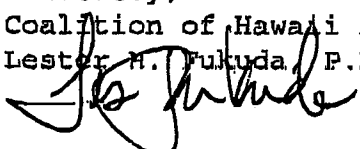
What happened to personal responsibility and accountability for the person or persons that chose to cause the accident by drunk driving, speeding, and/or being reckless or un-attentive. Design professionals very carefully design highways according to the current State and Federal codes and our design & construction is closely scrutinized by the State DOT. We are unfairly the "deep pocket" in every public highway accident case. Most of the small firms can no longer afford to work on highway projects, leaving only a select few firms to design and construct our local highways.

We urge you to support HB 1316, HD2 - Relating to Torts. Mahalo for this opportunity to express our business concerns and for your consideration of this important bill.

Sincerely,

Coalition of Hawaii Engineering &amp; Architectural Professionals

Lester H. Fukuda, P.E., FACEC



April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi; Chair, Dwight Y. Takamine, Vice Chair; and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Myron Nomura and I am an owner-partner of a local small business engineering consulting firm of 20 people. I am in **strong support of HB 1316, Relating to Torts**. I had written you before to request that your Committee hear this Tort Reform Bill, and I sincerely thank you for doing so.

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, our deductible is high (>\$50,000) and the costs of defense are crippling to our business, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

Engineering Concepts, Inc. has made the difficult business decision to no longer participate in highway design projects because of the high risk, and we know of many other firms who have done the same. We feel that this situation damages the State as fewer qualified local professional firms are available to take on these projects, increasing the costs and time for design. The impact to our firm in this difficult economy is staggering.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Aloha,



Myron Nomura  
President

April 3, 2009  
09A-113

**EMAILED TESTIMONY TO:**

[JGtestimony@Capitol.hawaii.gov](mailto:JGtestimony@Capitol.hawaii.gov)  
[sentaniguchi@capitol.hawaii.gov](mailto:sentaniguchi@capitol.hawaii.gov)  
[sentakamine@capitol.hawaii.gov](mailto:sentakamine@capitol.hawaii.gov)

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair  
Dwight Y. Takamine, Vice Chair, and  
Members of the Committee on Judiciary and Government Operations

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice-Chair Takamine, and Committee Members:

Belt Collins Hawaii is a local firm engaged in civil engineering, planning, landscape architecture, and environmental consulting. We support HB 1316, which is intended to limit the liability of firms such as ours in a more equitable manner. In the past, Belt Collins has regretfully turned down work due to onerous indemnification clauses in the contracts which would have burdened us with an unfair share of liability. With the way the law stands, a single major lawsuit has the potential to drive a design firm out of business. The result is loss of high-quality jobs and one less firm able to provide services critical to our community. Given the emphasis on infrastructure improvements to stimulate the economy, this result is unacceptable.

HB 1316 attempts to bring fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. However, for most firms, the professional liability risk for design professionals far outweighs their financial reward from these projects.

Under joint and several liability, a design professional who may be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident may be forced to pay far more than his/her share of damages.

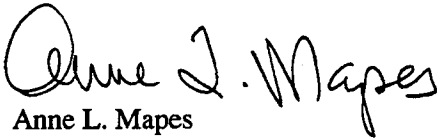
Even before going to trial, the insurance companies settle for the design professional's insurance policies' limits, because of the risk of large rewards at trial. Because of the risks and escalating professional liability insurance premiums associated with doing highway work, many of our small firms no longer participate in these projects, reducing the pool of qualified consultants.

HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation in other states and feel HB 1316 is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

Honorable Senators Brian T. Taniguchi, Chair  
Dwight Y. Takamine, Vice Chair, and  
Members of the Committee on Judiciary and Government Operations  
April 3, 2009 / 09A-113  
Page 2

Belt Collins Hawaii appreciates the continuing efforts of your committee and the members of the Senate to improve the business climate for small business in Hawaii. Thank you for the opportunity to express support for HB 1316.

Very truly yours,  
BELT COLLINS HAWAII LTD.



Anne L. Mapes  
Chairman and CEO

EH:jdk

Email: [senbunda@capitol.hawaii.gov](mailto:senbunda@capitol.hawaii.gov)  
[sengabbard@capitol.hawaii.gov](mailto:sengabbard@capitol.hawaii.gov)  
[sennishihara@capitol.hawaii.gov](mailto:sennishihara@capitol.hawaii.gov)  
[senslom@capitol.hawaii.gov](mailto:senslom@capitol.hawaii.gov)



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**Senate Committee on Commerce & Consumer Protection**

Emailed testimony to: JGOtestimony@Capitol.hawaii.gov

To: Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair  
Members of the Senate Committee on Judiciary and Government Operations

From: Karen Hong, Finance Insurance Ltd.

Date: Monday, April 6, 10:00 am  
Conference Room 016

Subject: Support of **HB 1316 HD2 – Relating to Torts**

As the insurance agent for many of the architectural and engineering firms doing business in Hawaii, I **support the passage of HB 1316.**

Design professional's carry professional liability insurance, which like most malpractice insurance coverage is very expensive. When a design professional is put into a position of paying for more than their fair share of a claim, it increases the cost and availability of their insurance and the industry as a whole.

Unlike contractors, who can declare bankruptcy and then start a new business all over again, design professionals have a personal liability. They cannot easily escape their liabilities and can lose their personal assets. To have this risk on a frivolous claim is not fair.

Design professionals, should pay for their share of the loss due to their portion of negligence, but not more than their share, when the percentage is negligible. I feel that this bill is more than generous in that if the design professional is 25% or more negligent, then joint and several liability would still apply.

Thank you for the opportunity to testify in support of HB 1316.

Please feel free to contact me at 808-522-2095 if you have any questions.



KENNETH K. KUROKAWA, P.E.  
TERRANCE S. ARASHIRO, P.E.  
DONOHUE M. FUJII, P.E.  
STANLEY T. WATANABE  
IVAN K. NAKATSUKA, P.E.

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Austin, Tsutsumi & Associates, Inc. is a locally owned and managed small business civil engineering firm in business for 75 years. **We are in strong support of HB 1316, Relating to Torts.**

In 2007, we were named as one of three co-defendants in a claim filed on behalf of plaintiff who had been injured in a serious vehicular accident which occurred as a result of the individual falling asleep at the wheel and hitting a guardrail. Our role was limited to providing a traffic report, but due to a reference to the State Department of Transportation's guardrail standards at that time, we were named as co-defendants in the case with a number of other parties. At no time had we been involved in any aspect of the design, construction, or inspection of the road.

Under current tort law when there is an accident on a highway, the design professional who may have been involved in a project on the highway, may be required to cover one hundred percent (100%) of the liability, even though the design professional is only 1% negligent. As a result, the design professional's insurance company will settle for up to the insurance policies limits, generally a million dollars, simply because under the current law, there is no incentive for the design professional to go to trial when under joint and several he could be responsible for a greater percentage of the liability. Needless to say, this is unfair and not good public policy, because it does not place responsibility with the proper parties, and allows persons to seek out the "deep pockets," even when the accident is caused by an uninsured motorist who is themselves negligent or grossly at fault.

HB 1316 offers a compromise solution. HB 1316 would limit the design professional's liability on highway projects to no more than its percentage share of the damage if the design professional is less than twenty-five percent (25%) liable. If the design professional is twenty-five percent (25%) or more liable, then joint and several liability would apply. This is a fair solution.

Austin, Tsutsumi & Associates, Inc. appreciates the continuing efforts of your committee and the members of the Senate to improve the business climate for small business in Hawaii. We trust that this letter will make a difference and thank you for the opportunity to testify in **support of HB 1316.**

Sincerely,

Terrance S. Arashiro, PE  
Senior Vice President





THE LIMTIACO CONSULTING GROUP  
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

April 3, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

The Limtiaco Consulting Group, Inc., a Hawaii-owned small business engineering firm, appreciates this opportunity to **support HB 1316, Relating to Torts.**

As a small business owner and design professional, every project has the potential to impact my professional and personal livelihood, not to mention that of my employees and subconsultants. While risk is a reality of business, the current joint and several liability conditions are unfair particularly when considering negligence is not necessary for risk exposure. How receptive would you be to pay damages when it wasn't your fault?

Under current law, a design professional who is pulled into a claim (even frivolously) and is found by a jury to be only one percent (1%) liable for damages could be forced to pay far more in damages.

Example: say a project is worth \$50,000 (with a potential profit of only \$5,000). If the engineer is found to be only 1% liable for a claim, she/he could be forced to pay \$1,000,000 in damages. In most instances, liability insurance kicks in, but not without consequences: higher premiums every year thereafter, non-billable time, etc.

HB 1316 promotes fairness in risk allocation, but HB 1316 does not eliminate liability from design professionals.

This bill will improve our business climate and will result in job growth, particularly with the many small business that constitute a large portion of Hawaii's engineering industry.

Thank you for the opportunity to testify in strong support of HB 1316.

Respectfully,  
*The Limtiaco Consulting Group, Inc.*

Jason H. Lau, P.E., LEED AP  
Principal

April 3, 2009

EMAILED TESTIMONY TO: JGOTestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Roy Y. Yamachi and I work for a Hawaii-owned Architectural consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of facility designs (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the facilities, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the facility's condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,



Roy Y. Yamachi, AIA



**AIA Hawaii State Council**  
A Council of The American Institute of Architects

4.6.09 10:00 am  
Senate JGO

April 6, 2009

Honorable Brian Taniguchi, Chair  
Senate Committee on Judiciary and Government Operations

Re: **House Bill 1316 HD 2**  
**Relating to Torts**

Dear Chair Taniguchi Members of the Committees,

My name is Daniel Chun, Government Affairs Chair of The American Institute of Architects (AIA). AIA is in **STRONG SUPPORT** of HB 1316 HD 2. The current tort situation where architects, engineers, and landscape architects may be 100 percent joint and severally liable for actions of others that occur on highways and other public ways has the following negative consequences:

- AIA represents the interests of about 180 professional businesses, the overwhelming number being Hawaii-based small businesses. Current architect's personal risk at the point where our design professional businesses are increasingly economically unsustainable.
- Hawaii's design businesses will be increasingly dominated by out-of-state firms who are large enough to manage this liability.
- The long-term consequence of Hawaii's unbalanced tort liability is that the design professions, especially the engineering sector, are much less attractive to younger people as careers.

Opponents of this bill have always argued that statistics and other numerically based evidence are needed before the legislature takes action. This argument ignores the idea that Joint and Several Liability (JSL) is itself an emotionally rooted concept: making the plaintiff whole at the expense of defendants who are perceived to have the deepest pockets even though our defendant's share of liability may be small.

AIA asks the legislature to share some of its emotional regard for plaintiffs with an aggrieved profession having to pay disproportionate costs over and above its personal responsibility. Please momentarily put yourselves in our shoes while you make decisions.

HB 1316 HD2 is a compromise proposal and not a shirking of our legitimate professional responsibility. Thank you for this opportunity to present **STRONGLY SUPPORTING** testimony for this bill.

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is John K. Maute, P.E. and I own for a Hawaii-based engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to my businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

My firm has made the difficult business decision to no longer participate in highway design projects because of the high risk, and I know of many other firms who have done the same. I feel that this situation damages the State as fewer qualified professional firms are available to take on these projects, increasing the costs and time for design. The impact to my firm in this difficult economy is staggering.

I appreciate the opportunity to express my strong support of HB 1316 and urge you to pass this bill.

Sincerely,

John K. Maute, P.E. Managing Member  
NOLA Engineering, LLC



KENNETH K. KUROKAWA, P.E.  
TERRANCE S. ARASHIRO, P.E.  
DONOHUE M. FUJII, P.E.  
STANLEY T. WATANABE  
IVAN K. NAKATSUKA, P.E.

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Austin, Tsutsumi & Associates, Inc. is a locally owned and managed small business civil engineering firm in business for 75 years. **We are in strong support of HB 1316, Relating to Torts.**

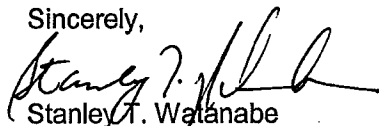
In 2007, we were named as one of three co-defendants in a claim filed on behalf of plaintiff who had been injured in a serious vehicular accident which occurred as a result of the individual falling asleep at the wheel and hitting a guardrail. Our role was limited to providing a traffic report, but due to a reference to the State Department of Transportation's guardrail standards at that time, we were named as co-defendants in the case with a number of other parties. At no time had we been involved in any aspect of the design, construction, or inspection of the road.

Under current tort law when there is an accident on a highway, the design professional who may have been involved in a project on the highway, may be required to cover one hundred percent (100%) of the liability, even though the design professional is only 1% negligent. As a result, the design professional's insurance company will settle for up to the insurance policies limits, generally a million dollars, simply because under the current law, there is no incentive for the design professional to go to trial when under joint and several he could be responsible for a greater percentage of the liability. Needless to say, this is unfair and not good public policy, because it does not place responsibility with the proper parties, and allows persons to seek out the "deep pockets," even when the accident is caused by an uninsured motorist who is themselves negligent or grossly at fault.

HB 1316 offers a compromise solution. HB 1316 would limit the design professional's liability on highway projects to no more than its percentage share of the damage if the design professional is less than twenty-five percent (25%) liable. If the design professional is twenty-five percent (25%) or more liable, then joint and several liability would apply. This is a fair solution.

Austin, Tsutsumi & Associates, Inc. appreciates the continuing efforts of your committee and the members of the Senate to improve the business climate for small business in Hawaii. We trust that this letter will make a difference and thank you for the opportunity to testify in **support of HB 1316.**

Sincerely,

  
Stanley T. Watanabe  
Vice President



**KAI HAWAII**  
STRUCTURAL & FORENSIC ENGINEERS

Ken K. Hayashida, P.E.  
Michael P. Hunnemann, P.E.

April 3, 2009

EMAILED TESTIMONY TO: JGOtestimony@Capitol.hawaii.gov

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016**  
**(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Ken Hayashida and I work for a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

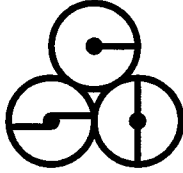
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

Sincerely,

Ken Hayashida, P.E.  
President  
KAI Hawaii, Inc.



**CONSULTING  
STRUCTURAL HAWAII, INC.**

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April 3, 2009

EMAILED TESTIMONY TO: [JGOtestimony@Capitol.hawaii.gov](mailto:JGOtestimony@Capitol.hawaii.gov)

**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

I am in **strong support of HB 1316, Relating to Torts**. My name is Roy K. Yamashiro and I work for Consulting Structural Hawaii, Inc. a Hawaii-based engineering consulting firm.

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, our deductibles are high >\$25,000 and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

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We appreciate the opportunity to express our **strong support of HB 1316** and urge you to pass this bill.

Respectfully submitted,

Roy K. Yamashiro, P.E., Principal



KENNETH K. KUROKAWA, P.E.  
TERRANCE S. ARASHIRO, P.E.  
DONOHUE M. FUJII, P.E.  
STANLEY T. WATANABE  
IVAN K. NAKATSUKA, P.E.

April 3, 2009

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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Judiciary and Government Operations

**Subject: HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

Austin, Tsutsumi & Associates, Inc. is a locally owned and managed small business civil engineering firm in business for 75 years. **We are in strong support of HB 1316, Relating to Torts.**

In 2007, we were named as one of three co-defendants in a claim filed on behalf of plaintiff who had been injured in a serious vehicular accident which occurred as a result of the individual falling asleep at the wheel and hitting a guardrail. Our role was limited to providing a traffic report, but due to a reference to the State Department of Transportation's guardrail standards at that time, we were named as co-defendants in the case with a number of other parties. At no time had we been involved in any aspect of the design, construction, or inspection of the road.

Under current tort law when there is an accident on a highway, the design professional who may have been involved in a project on the highway, may be required to cover one hundred percent (100%) of the liability, even though the design professional is only 1% negligent. As a result, the design professional's insurance company will settle for up to the insurance policies limits, generally a million dollars, simply because under the current law, there is no incentive for the design professional to go to trial when under joint and several he could be responsible for a greater percentage of the liability. Needless to say, this is unfair and not good public policy, because it does not place responsibility with the proper parties, and allows persons to seek out the "deep pockets," even when the accident is caused by an uninsured motorist who is themselves negligent or grossly at fault.

HB 1316 offers a compromise solution. HB 1316 would limit the design professional's liability on highway projects to no more than its percentage share of the damage if the design professional is less than twenty-five percent (25%) liable. If the design professional is twenty-five percent (25%) or more liable, then joint and several liability would apply. This is a fair solution.

Austin, Tsutsumi & Associates, Inc. appreciates the continuing efforts of your committee and the members of the Senate to improve the business climate for small business in Hawaii. We trust that this letter will make a difference and thank you for the opportunity to testify in **support of HB 1316.**

Sincerely,

Ivan K. Nakatsuka, PE  
Vice President





KENNETH K. KUROKAWA, P.E.  
TERRANCE S. ARASHIRO, P.E.  
DONOHUE M. FUJII, P.E.  
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Austin, Tsutsumi & Associates, Inc. appreciates the continuing efforts of your committee and the members of the Senate to improve the business climate for small business in Hawaii. We trust that this letter will make a difference and thank you for the opportunity to testify in **support of HB 1316.**

Sincerely,

Donohue M. Fujii, P.E.  
Vice President



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
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April 3, 2009

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Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and  
Members of the Senate Committee on Judiciary and Government Operations

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

The American Council of Engineering Companies of Hawaii (ACECH), representing more than 70 consulting engineering firms in Hawaii, **is in strong support of HB 1316, Relating to Torts.** However, we recommend changes to the bill as shown in the attached SD1. The proposed language of SD1 makes that case that design professionals are in a unique situation, and that the public utilities should not be included in this bill.

HB 1316 attempts to bring fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. However, for most firms and for virtually all our small member firms, the professional liability risk for design professionals far outweighs their financial reward from these projects.

Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

Often before going to trial, insurance companies settle for the design professional's insurance policies limits, even when there is no clear negligence on the part of the design professional, because of the risk of large awards from juries. Design professionals have been subject to paying large settlements and in some cases have no more insurance coverage for claims on particular projects. It is important to keep in mind that our work on such projects is performed to State and Federal design standards and codes, and is reviewed and approved by government agencies.

This bill addresses our potential damages from third-party lawsuits; for example, the passenger who is injured by a drunk or speeding driver. When the responsible party's limited insurance is exhausted, it is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate the third party(ies) beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to small businesses. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to small design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically



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involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. Similarly, the public utilities have long-term responsibility for maintenance and upgrade of their systems and are not in the same position as design professionals, and should be removed from this bill.

In many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our small firms is simply out of balance with their involvement and the profits they receive. However, while we favor the full abolition of joint and several liability, we believe HB 1316 is a reasonable compromise, with the design professional still subject to joint and several liability if they are greater than 25% at fault.

Because of the risks and escalating professional liability insurance premiums associated with doing highway work, many of our firms no longer participate in highway projects. This reduces the pool of qualified consultants available to do the work, reduces innovation and quality design, and also favors large, predominately mainland firms. These large mainland firms essentially self-insure and are able to absorb more risk, but their profits go out of the state. With the upcoming anticipated increases in infrastructure funding, the damage to the State's economy from our small firms not participating is a real negative impact for the State.

HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or more liable, joint and several liability would still apply. We have looked at tort reform legislation in other states and feel HB 1316 is a reasonable and fair compromise to the full abolition of joint and several liability enacted in a number of states.

ACECH appreciates the opportunity to express our strong support of HB 1316. We urge you to pass this bill. Please contact me if you have any questions regarding our testimony.

Kind Regards,

Janice C. Marsters  
National Director

April 3, 2009

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**Hearing Date: Monday, April 6, 10:00 a.m., Conference Room 016  
(Senate Committee on JUDICIARY AND GOVERNMENT OPERATIONS)**

Honorable Senators Brian T. Taniguchi, Chair, Dwight Y. Takamine, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: **HB 1316 HD2, Relating to Torts**

Dear Chair Taniguchi, Vice Chair Takamine, and Committee Members,

My name is Louis Cheng and I work for a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident could be forced to pay far more than his/her share of damages.

It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance as an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling to our businesses, particularly in these tough economic times. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future.

This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the owner (State or County) has the long-term responsibility for maintenance, repair and upgrade of the highway system, and its citizens enjoy the long-term benefit of the projects. In fact, in many cases, the owner's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to our firms is simply out of balance with their involvement and the profits they receive.

We appreciate the opportunity to express our strong support of HB 1316 and urge you to pass this bill.

