

STAND. COM. REP. NO.

708

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1316
H.D. 2

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

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1316, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

begs leave to report as follows:

The purpose of this bill is to abolish joint and several liability for design professionals in tort claims relating to the maintenance and design of public highways, except when the design professional's degree of negligence is 25 percent or more.

Engineering Solutions, Inc.; Fukunaga & Associates, Inc.; Coalition of Hawaii Engineering and Architectural Professionals; American Council of Engineering Companies of Hawaii; American Society of Civil Engineers - Hawaii Section; Austin, Tsutsumi & Associates, Inc.; The Limtiaco Consulting Group, Inc.; Gray, Hong, Nojima, & Associates, Inc.; Shigemura, Lau, Sakanashi, Higuchi and Associates, Inc.; Brown and Calwell; KAI Hawaii, Inc.; Consulting Structural Hawaii, Inc.; Erskine Architects, Inc.; WTN Architecture, Inc.; American Society of Landscape Architects - Hawaii Chapter; Atlas Engineering, LLC.; Arcadia Architecture, Inc.; Collaborative Studio, LLC.; TreeHouse HI Team, LLC.; Tanimura & Associates, Inc.; Don Shaw AIA, Inc.; Riehm Owensby Planners Architects; Ferraro Choi and Associates, Ltd.; Kelso Architects, Inc.; John K. Mossman Design, Inc.; and several concerned individuals supported this bill. The Hawaii Association for Justice opposed this measure. Hawaiian Electric Company,

HB1316 HD2 HSCR JUD HMS 2009-2632



Hawaii Electric Light Company, Maui Electric Company, and Hawaiian Telcom submitted comments.

Your Committee has amended this bill by:

- (1) Adding public utilities, as defined in Section 269-1, Hawaii Revised Statutes, as a type of organization covered by the same 25 percent fault attribution necessary to be held jointly and severally liable in claims relating to the maintenance and design of public highways; and
- (2) Making technical, nonsubstantive changes for clarity, consistency, and style.

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

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



JON RIKI KARAMATSU, Chair



Record of Votes of the Committee on Judiciary

Bill/Resolution No.: <i>HB 1316, HD 1</i>	Committee Referral: <i>CPC, JUD</i>	Date: <i>2/24/09</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. KARAMATSU, Jon Riki (C)	✓			
2. ITO, Ken (VC)	✓			
3. BELATTI, Della Au		✓		
4. CABANILLA, Rida	✓			
5. CARROLL, Mele				✓
6. HERKES, Robert N.	✓			
7. LUKE, Sylvia		✓		
8. McKELVEY, Angus L.K.				✓
9. MIZUNO, John M.	✓			
10. MORITA, Hermina M.				✓
11. OSHIRO, Blake K.	✓			
12. SOUKI, Joseph M.	✓			
13. TSUJI, Clift	✓			
14. WAKAI, Glenn				✓
15. MARUMOTO, Barbara C.	✓			
16. THIELEN, Cynthia				✓
TOTAL (16)	9	2		5
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>committee acronym(s)</small>				
Vice Chair's or designee's signature: <i>Kel</i>				
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO				

A BILL FOR AN ACT

RELATING TO TORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§663-_____ Design professional or public utility as a
5 tortfeasor; public highways. (a) Any other law to the
6 contrary notwithstanding, including but not limited to sections
7 663-10.9, 663-11 to 663-13, 663-16, 663-17, and 663-31, in any
8 case involving tort claims relating to the maintenance and
9 design of public highways, where a design professional or
10 public utility is determined to be a tortfeasor along with one
11 or more other tortfeasors, the design professional or public
12 utility shall be liable for no more than that percentage share of
13 damages attributable to the design professional or public
14 utility, except when the design professional's or public
15 utility's degree of negligence is twenty-five per cent or more,
16 including the vicarious liability for the acts or omissions of
17 the officers and employees of design professionals or public
18 utilities.



1 (b) For purposes of this section:

2 "Design professional" means a professional engineer,
3 architect, surveyor, or landscape architect licensed under
4 chapter 464.

5 "Public utility" means the same as defined in section 269-
6 1."

7 SECTION 2. The provisions of this Act shall apply
8 retroactively to the extent permitted by law.

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on January 1, 2020.



Report Title:

Joint and Several Liability; Design Professionals

Description:

Abolishes joint and several liability for design professionals and public utilities in tort claims relating to the maintenance and design of public highways, except when a design professional's or public utility's degree of negligence is 25% or more. Effective 01/01/2020. (HB1316 HD2)



March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Corey Matsuoka and I am the President of the Hawaii Chapter of the American Public Works Association (APWA). I am in **strong support of HB 1316 HD2 - 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 HD2 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.



Corey Matsuoka, P.E., PMP, LEED AP
President
American Public Works Association

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Norman M. Kawachika and I am currently president of the American Council of Engineering Companies of Hawaii. 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 on 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 can be forced to pay far more than his/her share of damages.

It is 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 related to the design professionals' degree of negligence. While it's tempting to think that the firms' professional liability insurance is an easy source of money, deductibles are high (>\$25,000) and the costs of defense are crippling the engineering businesses, particularly in these tough economic times. Furthermore, if a firm has a claim filed against it, it is much more difficult to obtain insurance coverage in the future.

This burden on design firms is particularly troublesome when their role in the life of the highway project (and their profits from these projects) is so small. They are typically involved in a small window of only one or two years of the project, 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 many cases, the State's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to the engineering firms is simply out of balance with their involvement and the profits they receive.

HB 1316 provides for fairness in risk allocation. Design professionals who are found less than 25% at fault will 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 will still apply.

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

Norman M. Kawachika, P.E.
President
American Council of Engineering Companies of Hawaii
Telephone: (808) 531-1308
nkawachika@ssfm.com



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

President

Norman Kawachika, P.E.
SSFM International
Ph: (808) 531-1308
Fx: (808) 521-7348

President-Elect

John Katahira, P.E.
The Limtiaco Consulting Group
Ph: (808) 596-7790
Fx: (808) 596-7361

Treasurer

Sheryl Nojima, Ph.D.
Gray Hong Nojima & Assoc.
Ph: (808) 521-0306
Fx: (808) 531-8018

Secretary

Douglas Lee, P.E.
Brown and Caldwell
Ph: (808) 523-8499
Fx: (808) 533-0226

Past President

Jon Nishimura, P.E.
Fukunaga & Assoc.
Ph: (808) 944-1821
Fx: (808) 946-9339

National Director

Janice Marsters, Ph.D.
Engineering Solutions
Ph: (808) 488-0477
Fx: (808) 488-3776

Directors

Terrance Arashiro, P.E.
Austin, Tsutsumi & Assoc.
Ph: (808) 533-3646
Fx: (808) 526-1267

Beverly Ishii-Nakayama, P.E.
Shigemura, Lau, Sakanashi,
Higuchi & Assoc.
Ph: (808) 942-9100
Fx: (808) 942-1899

Joel Yuen, P.E.
Insynergy Engineering
Ph: (808) 521-3773
Fx: (808) 521-3993

Ginny M. Wright
Executive Director
P.O. Box 88840
Honolulu, HI 96830
Ph: (808) 234-0821
Cell: (808) 741-4772
Fx: (808) 234-1721
Email: gwright@acechawaii.org

Website: www.acechawaii.org

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members
of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.**

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 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



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

President

Norman Kawachika, P.E.
SSFM International
Ph: (808) 531-1308
Fx: (808) 521-7348

President-Elect

John Katahira, P.E.
The Limtiaco Consulting Group
Ph: (808) 596-7790
Fx: (808) 596-7361

Treasurer

Sheryl Nojima, Ph.D.
Gray Hong Nojima & Assoc.
Ph: (808) 521-0306
Fx: (808) 531-8018

Secretary

Douglas Lee, P.E.
Brown and Caldwell
Ph: (808) 523-8499
Fx: (808) 533-0226

Past President

Jon Nishimura, P.E.
Fukunaga & Assoc.
Ph: (808) 944-1821
Fx: (808) 946-9339

National Director

Janice Marsters, Ph.D.
Engineering Solutions
Ph: (808) 488-0477
Fx: (808) 488-3776

Directors

Terrance Arashiro, P.E.
Austin, Tsutsumi & Assoc.
Ph: (808) 533-3646
Fx: (808) 526-1267

Beverly Ishii-Nakayama, P.E.
Shigemura, Lau, Sakanashi,
Higuchi & Assoc.
Ph: (808) 942-9100
Fx: (808) 942-1899

Joel Yuen, P.E.
Insynergy Engineering
Ph: (808) 521-3773
Fx: (808) 521-3993

Ginny M. Wright
Executive Director
P.O. Box 88840
Honolulu, HI 96830
Ph: (808) 234-0821
Cell: (808) 741-4772
Fx: (808) 234-1721
Email: gwright@acechawaii.org

Website: www.acechawaii.org

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 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

ASCE American Society of Civil Engineers

Hawaii Section

PO Box 917

Honolulu, HI 96808-0917

2009 Hawaii Section Officers

PRESIDENT

Michael Hunnemann

KAI Hawaii Inc.

31 North Pauahi Street, 2nd Floor

Honolulu, Hawaii 96817

(808) 533-2210, Fax: (808) 533-2686

e-mail: mike@kaihawaii.com

PRESIDENT-ELECT

Jeffrey Kalani

Yogi Kwong Engineers, LLC

615 Piikoi Street, Suite 1605

Honolulu, Hawaii 96814

(808) 596-2928, Fax: (808) 596-2409

e-mail: jeff@yogikwong.com

VICE PRESIDENT

Roger Babcock

University of Hawaii at Manoa

Dept. of Civil and Environmental Engrg.

2540 Dole Street, Holmes Hall #383

Honolulu, Hawaii 96822

(808) 956-7298, Fax: (808) 956-5014

e-mail: rbabcock@hawaii.edu

SECRETARY

Dawn Barsana

CH2M HILL

1132 Bishop Street, Suite 1100

Honolulu, Hawaii 96813

(808) 440-0254, Fax: (808) 538-8254

e-mail: dawn.barsana@CH2M.com

TREASURER

Ian Arakaki

The Limtiaco Consulting Group

650 Iwilei Road, Suite 208

Honolulu, Hawaii 96817

(808) 596-7790, Fax: (808) 596-7361

e-mail: ian@tlcghawaii.com

PAST PRESIDENT

Ron Iwamoto

Iwamoto & Associates, LLC

98-029 Hekaha Street, Suite #37

Aiea, Hawaii 96701

(808) 486-5202, Fax: (808) 486-5206

e-mail: ron@iwamotollc.com

YOUNGER MEMBER FORUM

PRESIDENT

Aaron Erickson

Wiss, Jenney, Elstner Associates, Inc.

1441 Kapiolani Boulevard, Suite 1700

Honolulu, Hawaii 96814

(808) 591-2728, FAX: (808) 591-2620

e-mail: aericsson@wje.com

March 17, 2009

Honorable Rosalyn H. Baker, Chair

Honorable David Y. Ige, Vice Chair

Honorable Members of the Senate Committee on Commerce & Consumer Protection

I am testifying in support for House Bill 1316 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.

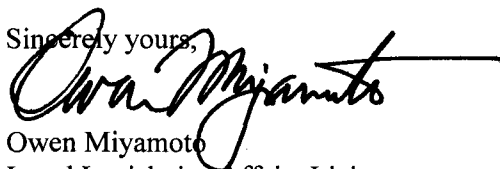
Our members regularly seal construction drawings certifying that the plans were prepared under their direction. The potential liability for these plans may be substantial and engineers can be held personally liable for their actions. The need to rationalize the legal system for collecting for damages 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. 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.

COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL PROFESSIONALS

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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 liabilities 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).

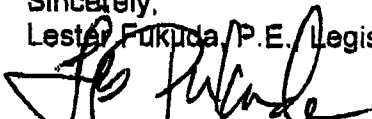
HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%)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

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.

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 liabilities. 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 HD2** and urge you to pass this bill.

Sincerely,
Lester Fukuda, P.E., Legislative Chair



TESTIMONY BEFORE
SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

By Joseph P. Viola
Hawaiian Electric Company, Inc.

9:00 a.m., March 19, 2009

HB 1316 HD2
Relating to Torts

Chair Baker, Vice Chair Ige, and members of the Committee:

My testimony is 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.¹ 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 testify on this matter.

¹ 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”).

HB 1316 HD2
RELATING TO TORTS
HAWAIIAN TELCOM - WRITTEN TESTIMONY
March 19, 2009

Chair Baker and Members of the Senate Committee on Commerce and Consumer Protection:

Hawaiian Telcom supports HB1316 HD2 – “Relating to Torts.”

By way of background, Hawaiian Telcom utilizes the state and county roads and rights of way to provide telecommunication services to the public. In tort cases involving an accident involving a utility pole along the public roads and highways, utilities (joint owners of the pole—telephone, electric, cable) such as Hawaiian Telcom, are often sued together with the state and county government as well as others responsible for the highway. Thus, defendants such as Hawaiian Telcom may end up paying more than their proportionate share of liability assigned. This may occur despite the fact that it is usually the government entity that determines where and under what conditions a utility pole may be placed along a road or highway.

HB1316 HD2 approaches this potential disparity by logically removing joint and several liability for the design professionals and public utilities if there is minor negligence (less than 25%); should the negligence be greater than 25%, design professionals and public utilities may be subject to joint and several liability.

Based on the aforementioned, Hawaiian Telcom is in support of the passage of HB 1316 HD2.

Thank you for the opportunity to testify.

From: Coral King [coral@AA-hi.com]
Sent: Wednesday, March 18, 2009 1:55 PM
To: CPN Testimony
Subject: HB 1316

Arcadia Architecture expresses our SUPPORT for HB 1316, Relating to Torts. HB 1316 brings a measure of fairness to the judicial system for design professionals, whose beneficial public works projects greatly improve the quality of life for Hawaii's citizens.

Unfortunately the professional liability risk for our small local firms far outweighs their financial reward from these projects. This burden to small design firms is particularly troublesome when our role in the life of the project (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 project, and its citizens enjoy the long-term benefit of the project.

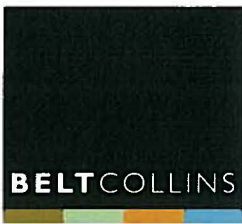
It is simply unfair to shift so much of the risk to design professionals.

Joseph K.M. Chan, AIA
Vice President

Coral C. King, AIA
President

ARCADIA ARCHITECTURE, Inc.
800 Bethel Street, Suite 302
Honolulu, HI 96813

phone: 533-3773 fax: 533-3774
email: Coral@AA-hi.com



March 18, 2009
09A-109

Sent Via Email

CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, 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 design 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.

Chair Baker, Vice Chair Ige, and Committee Members
March 18, 2009 / 09A-109
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 testify in support of HB 1316.

Very truly yours,
BELT COLLINS HAWAII LTD.

A handwritten signature in black ink, reading "Lawrence S. Agena". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Lawrence S. Agena
Vice President

March 16, 2009



**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members:

My name is David B. Bills and I own a Hawai'i 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 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.

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

Very truly yours,

BILLS ENGINEERING INC.

By: 
DAVID B. BILLS, President

DBB:flb

BROWN AND
CALDWELL

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and
Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

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

Sincerely,

Brown and Caldwell

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

Douglas Lee, P.E.
Executive Engineer



ENGINEERING SOLUTIONS, INC.

Our Name, Our Mission for a Sustainable Environment

98-1268 Kaahumanu Street, Suite C-7 • Pearl City, Hawaii 96782 • Phone: (808) 488-0477 • Fax: (808) 488-3776

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair; David Y. Ige, Vice Chair; and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

We strongly support HB 1316, Relating to Torts. Like the majority of engineering firms in Hawaii, we are a small business, with 16 employees. The inequitable concept of joint and several liability is a serious risk for any small firm; and we will not do work for the Department of Transportation due to that risk. Joint and several liability puts the livelihood of all employees of small businesses at risk.

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.

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.

Sincerely,

ENGINEERING SOLUTIONS, INC.

Richard E. Frey
Vice President



FINANCE INSURANCE, LTD.

Quality Service For Your Insurance Needs

Senate Committee on Commerce & Consumer Protection

Emailed testimony to: CPNtestimony@Capitol.hawaii.gov

To: Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

From: Karen Hong, Finance Insurance Ltd.

Date: Thursday, March 19, 2009, 9:00 am
Conference Room 229

Subject: Support of **HB 1316 – 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.

KELSO ARCHITECTS inc. kelso@hawaii.rr.com

25 South Kalaheo Avenue, Kailua, Hawaii 96734 808-262-0006 Fax: 808-263-4864

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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

March 16, 2009

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Alvin Zane 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 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.

Sincerely

Alvin Zane

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Anna Lee 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.

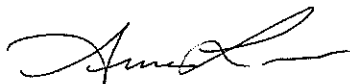
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional 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 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.

Sincerely,



Anna Lee

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Audrey Yokota. I am a licensed engineer and currently work as a principal in a small locally-owned engineering consulting firm. I am in **strong support of HB 1316, Relating to Torts.**

I do not typically voice my opinion on legislative matters; however, this is something that is very important to me. HB 1316 provides a measure of fairness to the judicial system for us design professionals, whose projects greatly improve the quality of life for the State's citizens. Currently, under joint and several liability, a design professional found to be only one percent (1%) liable for damages in a lawsuit (such as one related to a highway accident) could be forced to pay far more than his/her share of damages (much more than just 1%).

As a principal in a small engineering firm, I feel that it is very unfair to consider design professionals as "deep pockets" and for our professional liability insurance policies to be looked at as a way to compensate parties for awards (in amounts much disproportional to the design professionals' degree of negligence). While the firms' professional liability insurance may appear to be an easy source of money, deductibles are high (typically \$25,000 or more) and the expense to mount a defense for suits are crippling to businesses – especially small businesses like the one I work for. This is particularly true in the tough economic times that we are experiencing. If a firm is hit with a claim, it is very difficult to obtain future insurance coverage – essential for continuing to practice our trade.

I find this burden on design firms to be particularly troublesome when you consider the short duration of the design phase over life of the highway and the small profits we may obtain from our work on these projects. Our design portion of the project may typically be one or two years, as compared to the State – who 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 many cases, the State's maintenance activities and upgrades to the original design have a greater impact on condition of the highway than the design engineer's original design. The risk to our firms have simply gone out of balance from our involvement in the original design and also when compared to the small profits we gain.

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.

On another personal note, without at least the changes proposed in HB 1316, it is becoming harder and harder for me to fairly encourage interested students to pursue an engineering career and has also (on several occasions) made me seriously consider changing careers. I love what I do but the risks are getting too high. With the ongoing shortage of good engineers and without fair protection under the law, we will have a more and more difficult time finding qualified design professionals to take on the projects important to the continued health, safety, and welfare of the citizens of our state.

I appreciate the opportunity to express my strong support of HB 1316 and urgently request that you support passage of this bill.



March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Terrance Arashiro and I am the senior vice president of Austin, Tsutsumi & Associates, Inc. a local engineering consulting firm established in Hawaii in 1934. 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 \$35,000, the costs of premiums even higher 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, much less at a reasonable rate.

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.



Terrance S. Arashiro
Senior Vice President
Austin, Tsutsumi & Associates, Inc.

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Ken Kurokawa and I am the president of Austin, Tsutsumi & Associates, Inc. a local engineering consulting firm established in Hawaii in 1934. 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 \$35,000, the costs of premiums even higher 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, much less at a reasonable rate.

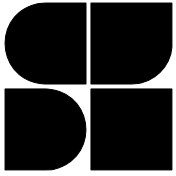
This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the State has the long-term responsibility for maintenance and repair of the 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.


Kenneth K. Kurokawa
President

Austin, Tsutsumi & Associates, Inc.



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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.

Our firm is mainly concerned with third party lawsuits and while firms may be able to obtain professional liability insurance, deductibles are high (>\$25,000). And if a firm has a claim, it becomes more difficult to obtain insurance coverage and the cost of premiums will undoubtedly increase.

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

Beverly Ishii-Nakayama, P.E., Principal

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Colleen “Zelda” Nash and I am a managing member 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.

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.

Colleen “Zelda” Nash, Managing Member

Atlas Engineering, LLC

P.O. Box 11188

Hilo, HI 96721

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Craig Arakaki 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.

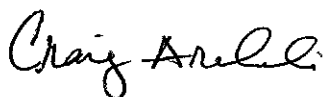
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional 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 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.

Sincerely,



Craig Arakaki

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Daryl Tanabe 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.

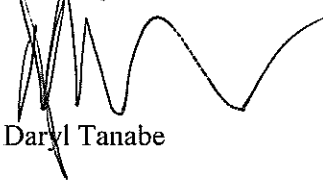
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional 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 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Daryl Tanabe". The signature is stylized with a large initial "D" and a long, sweeping tail.

Daryl Tanabe

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is David L. Adams. I work for a Hawaii-based engineering consulting firm. I am writing to express my **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 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, e.g., greater than \$25,000 for some consulting engineering firms, and the costs of defense are crippling, particularly in these tough economic times. If a firm has a claim, it becomes more difficult for that firm to obtain insurance coverage in the future, and once obtained the premiums paid for that insurance are considerably higher than before the claim.

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 very 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 the firms' 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.

Sincerely,



David L. Adams, P.E.

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Douglas Yamamoto 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 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.

Sincerely,



Douglas Yamamoto

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

Fukunaga & Associates, Inc. is a Hawaii-owned and managed Civil & Environmental Engineering firm operating in Hawaii since 1969. **We are in strong support of HB 1316, Relating to Torts.**

HB 1316 attempts to bring fairness to the judicial system for design professionals, who are responsible for the design of beneficial public works projects that greatly improve the quality of life for the State's citizens.

HB 1316 provides that 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 passed 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.

We believe that this limited concession to design professionals for highway projects is warranted because their work is conducted for the greater good of the State's citizens, a public benefit that far exceeds the reward to the design professional. Projects are conducted to design standards and codes and are reviewed and approved by government agencies. Many of Hawaii's design professionals are small businesses, and small firms with minimal involvement in a highway project are still subject to the same joint and several liability risks.

HB 1316 provides for more fairness in allocation of risk. 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 up to 100% of the damages if other parties are unable to pay).

For most firms, the professional liability risk for design professionals far outweighs their earnings from these projects. Many small business firms earn less than \$20,000 for their work on a highway project, but face enormous financial risks under joint and several liability. Even before going to trial, insurance companies settle for the design professional's insurance policies

FUKUNAGA & ASSOCIATES, INC.



limits, because of the risk of large rewards at trial. Thus the design professional, who may not have any negligence on a project, can be forced to pay many times more than his earnings on the project. If the settlement exceeds the design professional's insurance coverage, the design professional would be personally liable. This situation is punitive to a design professional doing good works for the State, while not accounting for the personal responsibility of the accident party who may have been drinking, speeding, or reckless.

Because of the risk 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. This results in a delay of awarding of these projects and increase in traffic woes in the State.

We stress that we are not seeking to escape our responsibilities. Design professionals who are found liable would still be required to pay their share of the damages, and those greater than 25% liable would still be subject to joint and several liability. This bill, however, would provide particular relief for our small business firms.

We appreciate the continuing efforts of your committee and the members of the State Legislature to improve the business climate for small business in Hawaii. Thank you for the opportunity to testify in support of **HB 1316**.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jon K. Nishimura', written over a faint, illegible typed name.

Jon K. Nishimura, P.E.
President
Fukunaga & Associates, Inc.

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Glenn Miyasato 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 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.

Sincerely,
MKE Associates LLC



Glenn Miyasato, P.E.
Its member



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

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

841 Bishop Street, Suite 1100
Honolulu, Hawaii 96813-3915
Telephone: (808) 521-0306
Fax: (808) 531-8018
email@grayhongnojima.com

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Michael Nojima, and I am senior vice president of Gray, Hong, Nojima & Associates, Inc. We are a woman-owned small business engineering consulting firm based in Hawaii. 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.

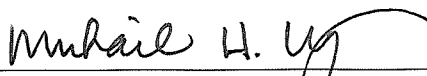
This burden to design firms is particularly troublesome when our role in the life of the highway (and our profits from these projects) is so small. We are typically involved for a small window of only one or two years, while the State has the long-term responsibility for maintenance and repair of the 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.

Sincerely,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.



Michael H. Nojima, PE, LEED AP
Sr. Vice President



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

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

841 Bishop Street, Suite 1100
Honolulu, Hawaii 96813-3915
Telephone: (808) 521-0306
Fax: (808) 531-8018
email@grayhongnojima.com

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Sheryl Nojima, and I am president of Gray, Hong, Nojima & Associates, Inc. We are a woman-owned small business engineering consulting firm based in Hawaii. 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.

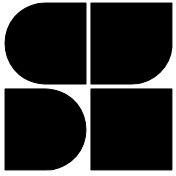
HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or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

Sincerely,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Sheryl E. Nojima, PhD, PE
President



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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.

Our firm is mainly concerned with third party lawsuits and while firms may be able to obtain professional liability insurance, deductibles are high (>\$25,000). And if a firm has a claim, it becomes more difficult to obtain insurance coverage and the cost of premiums will undoubtedly increase.

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

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is John Harada and I work for a Hawaii--owned architectural 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.



John Y. Harada
Vice President
In+Form Design, Inc



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.** As proposed in HB 1316, design professionals who are found less than twenty-five percent (25%) at fault would limit responsibility to the percentage of damages attributed, and would not be subject to joint and several liability. Joint and several liability would apply if the design professional is twenty-five percent (25%) or more liable.

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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Jon Muraoka and I am an owner/principal of a Hawaii-owned, small business consulting engineering 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.

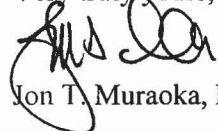
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional 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.

Very truly yours,



Jon T. Muraoka, P.E.

From: June Nakamura [june@engrsol.com]
Sent: Tuesday, March 17, 2009 7:00 PM
To: CPN Testimony
Subject: FW: HB1316, Relating to Tort

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

As president of Engineering Solutions, Inc., a small, woman owned engineering consulting firm located in Hawaii, I **strongly support HB 1316, Relating to Torts** or any other legislation that would reduce liability to the design professional beyond our own negligence.

HB 1316 provides a measure of fairness to the judicial system for design professionals. 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 over twenty-five percent (25%) liable, joint and several liability would still apply.

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, way exceeding our design fees. It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate injured parties, no matter how sympathetic the case may be, for awards way 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. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future and could put small firms like us out of business.

This burden to design firms is particularly troublesome when our role in the life of the highway 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 firm simply out balances, the profits receive. Therefore, we have chosen not participate on any more highway work, although we have done highway projects in the past, because of the current litigious climate of going after everyone involved in the project regardless of fault. We have seen our friends stripped of their insurance policy and pay over a \$1,000,000 for design that were within our professional standard of care. We can not risk being put out of business for work that was design properly.

HB 1316 provides fairness in allocation of risk and would allow us to reconsider again doing work for the State Department of Transportation.

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

Sincerely,

June J. Nakamura, P.E., President
ENGINEERING SOLUTIONS, INC.
Our Name, Our Mission for a Sustainable Environment
98-1268 Kaahumanu Street, Suite C-7
Pearl City, Hawaii 96782
Phone: (808) 488-0477
Fax: (808) 488-3776
e-mail: june@engrsol.com



KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS

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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Michael Hunnemann 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 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.

Sincerely,

Michael Hunnemann, P.E.
Vice President
KAI Hawaii, Inc.

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Kenneth Ishizaki 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.

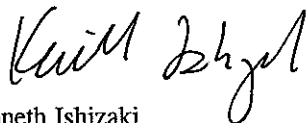
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional 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 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.

Sincerely,



Kenneth Ishizaki



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.** As proposed in HB 1316, design professionals who are found less than twenty-five percent (25%) at fault would limit responsibility to the percentage of damages attributed, and would not be subject to joint and several liability. Joint and several liability would apply if the design professional is twenty-five percent (25%) or more liable.

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



501 Sumner Street
Suite 620
Honolulu, Hawaii 96817
Phone: (808) 531-1308
Fax: (808) 521-7348
www.ssfm.com

17 March 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

I work for SSFM International, a Hawaii-owned project management, planning and engineering firm, and I would like to take this opportunity to express my **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.

Too often design professionals are viewed 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, policy deductibles and the costs of defense are crippling to our businesses, particularly in these tough economic times.

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.

SSFM International, Inc.

A handwritten signature in black ink, appearing to read 'Michael P. Matsumoto', written over a white background.

Michael P. Matsumoto, P.E., FACEC
President/CEO

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

I am a licensed professional engineer here in Hawaii and I work for an engineering consulting firm that is based in Hawaii. I am in **strong support of HB 1316, Relating to Torts.**

Engineers in Hawaii work on many projects that benefit the residents of this state. It is unfortunate that we are needlessly exposed to many liability issues in connection with these projects. HB 1316 provides a measure of fairness for design professionals who have worked on these projects that greatly improve the quality of life for the State's citizens. Under the current situation, design professionals can be forced to pay for more than their share of damages.

Design professionals do not have "deep pockets". Most of the engineering firms are small businesses. Having to pay for more than their fair share is an extreme burden. Even though the engineering firms carry professional liability insurance policies, the impact of lawsuits increases the cost of the insurance policies. Insurance companies are likely to settle many of the claims as a cheaper business alternative rather than go to court. Insurance premiums rise as a result of the settlement of the claims.

The engineers role on public works projects is small compared to the cost of construction. Our involvement on these projects is generally about 1-2 years. However, because these projects last a long time, we are exposed for the life of the project, even though we have no active involvement after design and construction are complete. Our projects are typically performed for government agencies, who takeover the operation and maintenance of the completed facilities. Our exposure on these projects does not equal the risk we undertake.

HB 1316 is a bill that 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.

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

Sincerely,

C. Michael Street, PE

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is **Paul Nash** and I own 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 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.

Paul Nash, P.E.

Atlas Engineering, LLC

P.O. Box 11188

Hilo, HI 96721

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Rae Loui and I work for an engineering consulting firm in Hawaii. 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.



From: Roy K. Yamashiro [ryamashiro@consultingstructuralhawaii.com]
Sent: Tuesday, March 17, 2009 7:36 AM
To: CPN Testimony
Subject: HB 1316, Relating to Torts

March 17, 2009

E-MAIL TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, 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-owned 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.

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 during design for small period of 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.

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

Respectfully submitted,
Roy K. Yamashiro, P.E., Principal

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Royce Fukunaga and I am an owner/principal of a Hawaii-owned, small business consulting engineering 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.

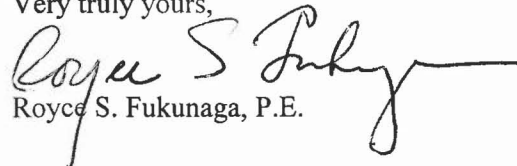
It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate parties for awards much beyond an amount proportional to the design professionals' degree of negligence. While it's tempting to think that the firms' professional 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.

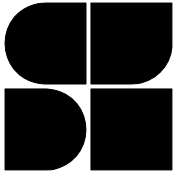
HB 1316 provides for more fairness in allocation of risk. Design professionals who are found less than 25% at fault would be responsible only for the percentage of damages attributed to them, and not be subject to joint and several liability. If the design professional is twenty-five percent (25%) or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

Very truly yours,

A handwritten signature in black ink, appearing to read "Royce S. Fukunaga". The signature is fluid and cursive, with a long horizontal stroke at the end.

Royce S. Fukunaga, P.E.



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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.

Our firm is mainly concerned with third party lawsuits and while firms may be able to obtain professional liability insurance, deductibles are high (>\$25,000). And if a firm has a claim, it becomes more difficult to obtain insurance coverage and the cost of premiums will undoubtedly increase.

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

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

From: Susan Kuniyoshi [susan@mkellc.com]
Sent: Tuesday, March 17, 2009 9:29 AM
To: CPN Testimony
Subject: HB 1316, Relating to Torts

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Susan Kuniyoshi and I am a principal 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.

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.

Susan Kuniyoshi, P.E.
MKE Associates LLC
Aiea Commercial Center, Suite 205
99-205 Moanalua Road
Aiea, HI 96701

Phone: (808) 488-7579 x2
Fax: (808) 488-7818

This email message is intended solely for the person or entity to which it is addressed and should not be opened, read, or utilized by any other party. If you have received this email in error, please contact the sender immediately and delete the material from any computer that has received it.



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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**.

HB 1316 promotes fairness in risk allocation, but HB 1316 does not eliminate liability from design professionals. As proposed in HB 1316, design professionals who are found less than twenty-five percent (25%) at fault would limit responsibility to the percentage of damages attributed, and would not be subject to joint and several liability. Joint and several liability would apply if the design professional is twenty-five percent (25%) or more liable.

Due to the current risk allocation, we have turned down projects due to the unreasonable risk we would have had to accept. One large lawsuit could severely drain our capital and resources to the point where it would have a detrimental impact to our employees and their families. As a result, our potential clients find themselves working with less "qualified" engineers and not the engineer originally selected.

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.

Ian Y. Arakaki
Principal

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Tieshi Huang 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 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.

Sincerely,



Tieshi Huang



D. L. ADAMS ASSOCIATES, LTD.

Consultants in Acoustics and Performing Arts Technologies

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Todd Beiler 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 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.

Todd Beiler, P.E.
Vice President

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Wayne Higuchi 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.

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.

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

Wayne K. Higuchi, S.E.

Shigemura, Lau, Sakanashi, Higuchi & Assoc., Inc.
1916 Young Street, 2nd Floor
Honolulu, HI 96826
Ph. 942-9100

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Ann Kutaka and I work for a Hawaii--owned architectural 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.



Ann A. Kutaka
President
In+Form Design, Inc

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Stanley Watanabe and I am a vice president of Austin, Tsutsumi & Associates, Inc. a local engineering consulting firm established in Hawaii in 1934. 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 \$35,000, the costs of premiums even higher 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, much less at a reasonable rate.

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.



Stanley T. Watanabe
Vice President
Austin, Tsutsumi & Associates, Inc.

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Chad Okinaka and I work for a Hawaii--owned architectural 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.



Chad Okinaka
In+Form Design, Inc

March 18, 2009

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

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

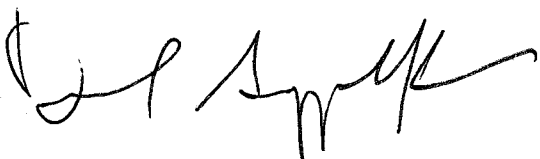
HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) 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 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.

A handwritten signature in black ink, appearing to read "David Seppelfrick". The signature is fluid and cursive, with a long horizontal stroke at the end.



**Irvin Higashi
and Associates Inc.**
Landscape Architects

3222 Kaimuki Ave.
Honolulu, Hawai'i 96816
Telephone: (808) 382-9949
Fax: (808) 735-0844
irvinhigashi@hawaiiantel.net

March 16, 2009

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Irvin Higashi and I work and own a landscape 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 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.

Thank you,

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Jeffrey Alves and I work for a Hawaii--owned architectural 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.



Jeffery Alves
Business Manager
In+Form Design, Inc

From: Lamer, John [jlamer@honolulu.gov]
Sent: Wednesday, March 18, 2009 8:01 AM
To: CPN Testimony
Subject: HB 1316 HD2 - Relating to Torts

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is John Lamer and I am a Hawaii-based Professional Engineer. I am in **strong support of HB 1316 HD2 - 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 HD2 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.

John S. Lamer, P.E.

From: June Nakamura [june@engrsol.com]
Sent: Tuesday, March 17, 2009 7:00 PM
To: CPN Testimony
Subject: FW: HB1316, Relating to Tort

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

As president of Engineering Solutions, Inc., a small, woman owned engineering consulting firm located in Hawaii, I **strongly support HB 1316, Relating to Torts** or any other legislation that would reduce liability to the design professional beyond our own negligence.

HB 1316 provides a measure of fairness to the judicial system for design professionals. 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 over twenty-five percent (25%) liable, joint and several liability would still apply.

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, way exceeding our design fees. It is simply unfair to consider design professionals as "deep pockets" and their professional liability insurance policies as a way to compensate injured parties, no matter how sympathetic the case may be, for awards way 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. And if a firm has a claim, it becomes more difficult to obtain insurance coverage in the future and could put small firms like us out of business.

This burden to design firms is particularly troublesome when our role in the life of the highway 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 firm simply out balances, the profits receive. Therefore, we have chosen not participate on any more highway work, although we have done highway projects in the past, because of the current litigious climate of going after everyone involved in the project regardless of fault. We have seen our friends stripped of their insurance policy and pay over a \$1,000,000 for design that were within our professional standard of care. We can not risk being put out of business for work that was design properly.

HB 1316 provides fairness in allocation of risk and would allow us to reconsider again doing work for the State Department of Transportation.

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

Sincerely,

June J. Nakamura, P.E., President
ENGINEERING SOLUTIONS, INC.
Our Name, Our Mission for a Sustainable Environment
98-1268 Kaahumanu Street, Suite C-7
Pearl City, Hawaii 96782
Phone: (808) 488-0477
Fax: (808) 488-3776
e-mail: june@engrsol.com

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Myron Nomura 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 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.

Sincerely,



Myron Nomura
President

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Lee Takushi and I work for a Hawaii-owned engineering consulting firm. I am in **strong support of HB 1316 HD2 - Relating to Torts.**

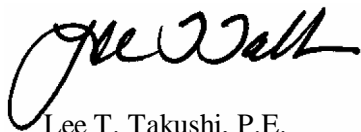
HB 1316 provides a measure of fairness to the judicial system for design professionals, whose work results in beneficial public works projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, a design professional found to be only one percent (1%) 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 HD2 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.



Lee T. Takushi, P.E.



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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Hayashida". The signature is written over a large, light-colored circular stamp or watermark. Below the signature, the text "Ken Hayashida, P.E. Principal KAI Hawaii, Inc." is printed in a black, sans-serif font.

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

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Michael J. Riehm, A.I.A. and I work for a Hawaii-based Riehm Owensby Planers Architects an architectural firm located on the Big Island. 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.

Michael J. Riehm, A.I.A.

A handwritten signature in blue ink, consisting of the letters 'M' and 'R' connected together, with a long horizontal stroke extending to the right.

miyabaraassociates llc

Landscape Architects & Planners

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Michael Miyabara and I work for a Hawaii landscape architectural and planning 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 our 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 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 many cases, the State's maintenance activities and upgrades affect the highway condition far more than the initial design. The risk to consultants is simply out of balance with our 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.

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

Mahalo.



Michael T. Miyabara, FASLA
MIYABARA ASSOCIATES LLC

Clifford Center
810 Richards Street, Suite 808
Honolulu, Hawaii 96813
Telephone (808) 531-1306
Facsimile (808) 533-6049
mail@miyabaraassociates.com

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Reynaldo Rios 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 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.

Reynaldo D. Rios Architect
Db. Architect Design Associates
822 Ahuwale
Honolulu Hawaii 96821

From: Robert Kishi [bobkishi@hawaiiantel.net]
Sent: Wednesday, March 18, 2009 10:36 AM
To: CPN Testimony
Subject: HB 1316, Relating to Torts
Attachments: Signature full.pdf; ATT00001.htm

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

You have probably read or heard the testimony of many architectural and engineering professional firms and organizations. I am just a one-man architectural firm (in practice for over 20 years), and it is time small firms like mine got a break. I strongly support the passage of HB 1316 relating to torts and humbly request your support of this bill also.

Yours truly,



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

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, 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.

Roy K. Abe, P.E.
Vice President

SARWAR STRUCTURAL ENGINEERING

CONSULTING SERVICES

Post Office Box 6689
Kamuela, Hawaii 96743

Phone (808) 885-5564
Fax (808) 885-0348

March 17, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Afaq Sarwar and I am the principal of Sarwar Structural Engineering, a Hawaii-based engineering consulting firm. I **strongly 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.

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

Very truly yours,

SARWAR STRUCTURAL ENGINEERING



Afaq Sarwar, S.E.
Principal

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Howard K. Endo, Ph.D., P.E., and I work for a Hawaii-based and 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 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.

Signature



Howard K. Endo, Ph.D., P.E.

President

Shimabukuro, Endo & Yoshizaki, Inc.

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Trevin Chang and I work for a Hawaii-based engineering consulting firm. I am in **strong support of HB 1316 HD2 - 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 HD2 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.

A handwritten signature in black ink, appearing to read "Trevin Chang". The signature is fluid and cursive, with a large initial "T" and "C".

Eric Arquero

From: Will McThewson [will@pacificrimarchitecture.com]
Sent: Tuesday, March 17, 2009 6:05 PM
To: CPN Testimony
Subject: Subject: HB 1316, Relating to Torts

Importance: High

March 16, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Will McThewson and I work for the Hawaii-based firm Pacific Rim Architecture llc. 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 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. Please support your constituent local businesses and not the lawyers that want to keep reform at bay for their own financial profits!

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. My firm (and many others) will not even consider doing State or County work due to the unfair liability. That is your loss.

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.

I wish you would enact similar legislation limiting liability for building constructions as well. I am grateful for having the benefit of pre-filing merit hearing. It is up to YOU to bring forth fairness in this litigious environment and to ensure that justice is served through a judicial system that seems biased and self serving. If you do nothing, the legal environment will only get worse.

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

Sincerely
Will McThewson AIA



ECS, INC.

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

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol hawaii gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

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

HB 1316 will provide a measure of fairness to the judicial system for design professionals, whose work results in beneficial projects that greatly improve the quality of life for the State's citizens. Under joint and several liability, an electrical engineering like ours could be found to be only one percent (1%) liable for damages in a lawsuit related to a highway accident yet we could be forced to pay far more than our share of damages.

It is just unfair to consider we design professionals as "deep pockets" and our 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 our firm's professional liability insurance as an easy source of money, our deductible is very high (\$50,000) and the costs of defense could cripple our small business, particularly in these tough economic times. And if we were to ever have a claim, it would be even more difficult to obtain insurance coverage in the future.

This burden to all the small design firms is particularly troublesome when our role in the life of the highway (and our profit for 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 our initial design. The risk to our firm is simply out of balance with our involvement and the profits we receive.

HB 1316 will provide for more fairness in the 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.

Thank you for 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.



ECS, INC.

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

March 18, 2009

EMAILED TESTIMONY TO: CPNtestimony@Capitol.hawaii.gov

**Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229
(Senate Committee on Commerce & Consumer Protection)**

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

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

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is Glenn Karamatsu and I work for 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 (our deductible 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 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.

Glenn T. Karamatsu, P.E.
Vice-President
ECS, Inc.

From: John Maute [jksmaute@yahoo.com]
Sent: Wednesday, March 18, 2009 4:32 PM
To: CPN Testimony
Subject: HB1316

Hearing Date: Thursday, March 19, 9:00 a.m., Conference Room 229 (Senate Committee on Commerce & Consumer Protection)

Honorable Senators Rosalyn H. Baker, Chair, David Y. Ige, Vice Chair, and Members of the Senate Committee on Commerce and Consumer Protection

Subject: HB 1316, Relating to Torts

Dear Chair Baker, Vice Chair Ige, and Committee Members,

My name is John K. Maute, P.E. and I manage 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 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.

Sincerely,

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