



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
FINANCE

February 13, 2013

2:00 p.m.

HB 137

RELATING TO PROCUREMENT.

Chair Luke, Vice-Chair Nishimoto, Vice-Chair Johanson and committee members, thank you for the opportunity to submit testimony on HB 137. The State Procurement Office's (SPO) comments are limited to SECTION 2 which adds a definition for "government body".

The SPO opposes the definition of "government body" as proposed on page 3, lines 22 to page 4, lines 1 to 5 for the inclusion of "... *other business entities retained by or contracting with the public entity...*" Private business should not be considered as a government body. The definition of "governmental body" pursuant to HRS §103D-104, do not include business entities as part of state government and therefore this difference may lead to confusion and disagreement towards the Hawaii Public procurement code's application.

The SPO opposes the language on page 3, lines 18 to 22 and page 4, lines 1 to 5.

Thank you.



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February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: Testimony In SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I have performed professional engineering services in the State of Hawaii for over 40 years, including design services for many State and County projects. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by any available insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties.

Requiring design professionals and firms to defend the State in absence of negligence is unreasonable. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to their professional services contracts.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

SSFM INTERNATIONAL, INC.

A handwritten signature in black ink, reading 'Michael P. Matsumoto'.

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

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

February 13, 2013
2:00 p.m.

HB 137

Chair Luke, Vice Chair Nishimoto, and members of the Committee, my name is Alison Powers, Executive Director of the Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** HB 137.

HB 137 seeks to amend Hawaii Revised Statutes Section 103D-713, which is entitled "Defense of a governmental body." Section 103D-713 currently has two major components:

Subsection (a) provides, in essence, that no contract of less than \$1,000,000 between a governmental body and a person licensed under Chapter 464 (i.e., engineers, architects, surveyors, or landscape architects) may require such contractor to defend the governmental body from any liability or damages arising out of the contractor's performance under the contract; and

Subsection (b) provides, in essence, that, subsection (a) notwithstanding, the contract may require the contractor to indemnify and hold harmless the governmental body from liability and damages arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the contractor in the performance of the contract or of the contractor's professional services.

HB 137 seeks to remove the \$1,000,000 dollar threshold dealing with the defense obligation. In other words, under current law, engineers, architects, surveyors, and landscape architects may be required to defend governmental bodies in contracts of a \$1,000,000 or more. However, under HB 137, these same professionals may not be required to defend governmental bodies in contracts of any amount.

HB 137 does **not** alter subsection (b), regarding a contractor's obligation to indemnify and hold harmless the governmental bodies.

The Hawaii Insurers Council objects to HB 137 for at least three reasons.

First, exempting only engineers, architects, surveyors, and landscape architects from any obligation to defend governmental bodies, regardless of contract amount, affords such professionals unequal benefits under the law. Contractors – prime and general contractors and subcontractors – are **not** afforded the same protections under current Section 103D-713 or HB 137. Indeed, HB 137 exacerbates the inequality because, if enacted, it would require contractors potentially to shoulder the **entire** defense obligation in contracts with governmental bodies. This could result in increased insurance premiums for contractors and subcontractors, burdening their bottom-line and negatively affecting the State's "procurement, project costs and quality, and innovation."

Second, the unequal treatment of professionals licensed under Chapter 464 and contractors may be subject to constitutional challenge under the equal protection clause. See, e.g., *Shibuya v. Architects Hawaii, Ltd.*, 65 Haw. 26, 647 P.2d 276 (1982) (statute of repose protecting the architect, general contractor, and subcontractor of a building, but not the manufacturer of equipment used in the building, violated the equal protection guaranty); *Fujioka v. Kam*, 55 Haw. 7, 514 P.2d 568 (1973) (statute of repose protecting engineer and contractor, but not owner of the building, violated the equal protection guaranty).

Third, the statement of purpose in HB 137 does not accurately reflect the impact of the proposed amendments. Section 1 states that “[t]he purpose of this Act is to prohibit indemnification clauses of governmental procurement contracts that are exclusively for the services of engineers, architects, surveyors, or landscape architects, unless the liability arises from the contractor’s own negligence or fault.” (Emphasis added).

HB 137 does **not** accomplish this stated purpose. Rather, as explained above, HB 137 seeks to amend subsection (a) of Section 103D-713 regarding contractual obligations to defend a governmental body. HB 137 does not seek to amend subsection (b), which is already in effect and which deals with the indemnification obligation of engineers, architects, surveyors and landscape architects.

Based on the foregoing, the Hawaii Insurers Counsel opposes HB 137 and requests that it be held. Thank you for the opportunity to testify.



**CONSULTING
STRUCTURAL HAWAII, INC.**
Structural Engineers
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Email: csh@consultingstructuralhawaii.com

February 13, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Gary S. Suzuki
Principal, Consulting Structural Hawaii, Inc.

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Honorable Chair Sylvia Luke and Members of the Committee;

The Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; 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. **We Strongly Support HB 137, Relating to Procurement.** The State Contract Language for General Terms and Conditions is a generic document and requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word “defend” in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our professional liability insurance.

A design professional’s PLI only covers harm caused by the design professional’s negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill

Sincerely,
Coalition of Hawaii Engineering & Architectural Professionals
Lester H. Fukuda, P.E., FACEC

Lester Fukuda



February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Bills Engineering Inc.

David B. Bills
President

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing registered professional engineer in the State of Hawaii running a locally-owned, small business Civil & Environmental Engineering company, and have provided design services for numerous State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

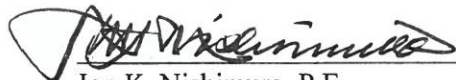
A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk above and beyond the design profession's Standard of Care, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

FUKUNAGA & ASSOCIATES, INC.



Jon K. Nishimura, P.E.
President



Architectural Diagnostics Ltd.

Building Diagnostics · Failure Analysis · Remedial Architecture · Architecture

12 February 2013

House Committee on Finance

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johnson, Vice Chairs; and Members of the House Committee on Finance

SUBJECT: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committees:

I am a practicing architect in the State of Hawaii, and in my 43 years of practice, have provided design services for a very limited number of State projects and for no County projects in spite of my practicing in a specialty field that would be very useful for both the State and County- repair of buildings with construction defects and age-related defects. We have been contacted many times by representatives of DAGS, UH and the City, requesting us to submit proposals on projects where our expertise was needed, such as stopping the leaks on the State Capitol Building roof and the Stan Sheriff Center roof. With very rare exceptions, we have declined. The primary reason for our reluctance to get involved with State or County projects is the unreasonable contract requirements and, in particular, the indemnification requirements. Our Errors & Omissions carrier has strongly advised us against entering into the required State and County contracts.

The idea that, as a qualification for helping the State and/or County solve problems they don't know how to solve, we, an 8 person small business, would be required to indemnify the State or County is ridiculous. We simply won't do it.

The recent court decisions across the country bringing attention to contractual indemnification clauses, only reinforce my resistance to participating in State and/or County work. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but by including the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others—this creates liability that is not covered by our insurance.

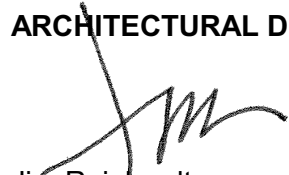
A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

ARCHITECTURAL DIAGNOSTICS, ITD.

A handwritten signature in black ink, appearing to read 'Jim Reinhardt', is written over the company name.

Jim Reinhardt
Its President

HB137

1099 Alakea Street, Suite 2400
Honolulu, Hawaii 96813
Tel: 808-523-8499
Fax: 808-533-0226
www.browncaldwell.com

February 11, 2013

Brown AND
Caldwell

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a licensed civil engineer in the State of Hawaii, and have provided design services for many State and County projects for over 30 years. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's current contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by my company's insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not cover the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability extends into our retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they are not negligent or at fault. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to their contracts.

I appreciate the continuing efforts of your respective committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for the opportunity to express my view in SUPPORT of this bill.

Respectfully submitted,

Brown and Caldwell



Douglas B. Lee, P.E.
Vice President



February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing professional engineer in the State of Hawaii, and have provided design services for a number of State and County projects over the last 22 years. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

URS Corporation

A handwritten signature in black ink, appearing to read "Clifford P. Lum".

Clifford P. Lum, P.E.

Vice President & Business Lines Program Manager



Pacific Geotechnical Engineers, Inc.

Soils & Foundation Engineering Consultants

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Waipahu, Hawaii 96797
Telephone: (808) 678-8024
Facsimile: (808) 678-8722
Email: pge@pacificgeotechnical.com

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us well after project completion and even into retirement.

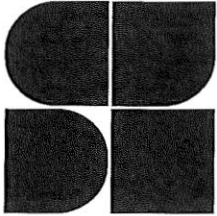
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

PACIFIC GEOTECHNICAL ENGINEERS, INC.

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



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

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

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

Dear Chair Luke and Members of the Committee:

I am a practicing structural engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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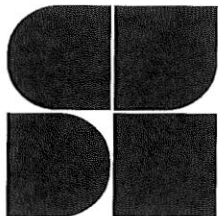
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill

Respectfully submitted,

Shigemura, Lau, Sakanashi, Higuchi and Associates

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



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

February 11, 2013

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

Dear Chair Luke and Members of the Committee:

I am a practicing structural engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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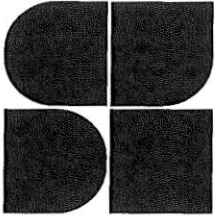
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill

Respectfully submitted,

Shigemura, Lau, Sakanashi, Higuchi and Associates

Wayne Higuchi, P.E.
Vice-President



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

February 11, 2013

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

Dear Chair Luke and Members of the Committee:

I am a practicing structural engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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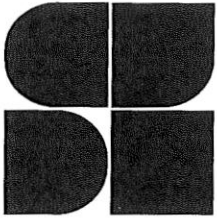
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill

Respectfully submitted,

Shigemura, Lau, Sakanashi, Higuchi and Associates

Craig Sakanashi, P.E.
Vice-President



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

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

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

Dear Chair Luke and Members of the Committee:

I am a practicing structural engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill

Respectfully submitted,

Shigemura, Lau, Sakanashi, Higuchi and Associates

Beverly Ishii-Nakayama, P.E.
Principal



February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

YOGI KWONG ENGINEERS, LLC.

A handwritten signature in black ink that reads "Jeffrey K. Kalani". The signature is written in a cursive, flowing style.

Jeffrey K. Kalani, P.E.
Associate

miyabaraassociates llc

Landscape Architects & Planners

February 13, 2013

Hawaii State House of Representatives
Hawaii State Capitol
Honolulu, HI 96813

House Committee on Finance

Honorable Representative Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance.

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**
Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Dear Chair Sylvia Luke and Members of the Committee:

I am a practicing, licensed landscape architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by my insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not cover the cost of defending and cover damages caused by other parties. The current contract language creates an unacceptable risk, especially considering that we design professionals are personally liable with no statute of limitations.

It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

Thank you for this opportunity to express my views and urge your SUPPORT of this bill.

Sincerely,



MIYABARA ASSOCIATES LLC
Michael T. Miyabara, FASLA

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



Consulting
Electrical
Engineers

ECS, Inc.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johnson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing electrical engineer in the State of Hawaii, and have provided design services for a many State and County projects for over 30 years. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement. Our firm was forced to decline State and County contracts in the past because of this inequitable risk.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
ECS, Inc.

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

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing sole proprietorship architect in the State of Hawaii. I have a successful track record of providing architectural design services for state projects including for the Department of Education, Department of Accounting and General Services and the University systems since 1990. I am very concerned about the State's contract language for design professionals.

The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by my insurance. As single practitioner, additional the "defend" clause would place all my personal assets, including my home at risk. Since this risk is not insurable, effectively I would be forced into an untenable situation of putting at risk everything that I have earned and saved in my 37-year architectural career or stop providing design services to the state.

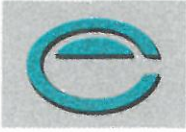
In the 23 years I have been successfully assisting the state agencies, to my knowledge there have been no projects resulting in claims against the state. I have no problems in standing by my work. I protect both myself, and the state by carrying professional liability insurance for any unanticipated problems due to my negligence, however it is not fair for me to have pay for damages or defense costs if I have done nothing wrong.

Thank you for an opportunity to express my position in SUPPORT of this bill.

Respectfully submitted,



Ken Kajiwara, AIA
Principal Architect



ENGINEERING CONCEPTS, INC.
Consulting Engineers

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

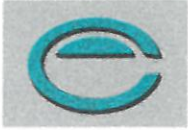
A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Engineering Concepts, Inc.

Myron Nomura
President



ENGINEERING CONCEPTS, INC.
Consulting Engineers

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

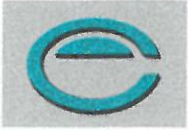
A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Engineering Concepts, Inc.

Kenneth Ishizaki
Executive Vice President



ENGINEERING CONCEPTS, INC.
Consulting Engineers

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Engineering Concepts, Inc.

Craig S. Arakaki
Vice President



S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Via E-mail: FINTestimony@capitol.hawaii.gov

Via Fax: 1-800-535-3859

February 13, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED, RELATING TO PROCUREMENT AS CURRENTLY DRAFTED.** Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

S&M Sakamoto, Inc. strongly opposes the passage of H.B. 137, Relating to Procurement, and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, S&M Sakamoto, Inc. strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii and have worked on several State projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I would like to express my concern about the contract language used by some State agencies for design professionals. These agencies require design professionals to obtain professional liability insurance (PLI) for our work, but also include the word “defend” in an indemnity clause, and require us to indemnify the State for the liability of others; this creates liability that is not covered by our insurance.

A design professional’s PLI only covers harm caused by the design professional’s negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committee and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my views in **SUPPORT** of this bill.

Respectfully submitted,

Greg Arakaki, P.E.
Kennedy/Jenks Consultants
Senior Engineer



KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS

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

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

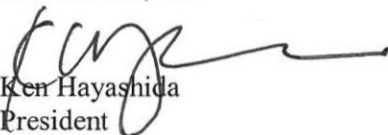
I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
KAI Hawaii, Inc.


Ken Hayashida
President



MAKAI OCEAN ENGINEERING, INC.

P.O. BOX 1206 KAILUA, OAHU, HAWAII 96734 USA

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

Makai Ocean Engineering, Inc. is an engineering firm in the State of Hawaii, that has provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

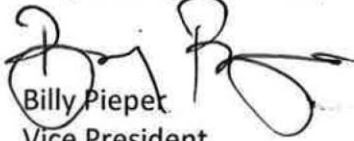
A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore

fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Billy Pieper', written over a circular stamp or mark.

Billy Pieper
Vice President

Makai Ocean Engineering, Inc.



THERMAL ENGINEERING CORPORATION

512 Kalihi Street • Honolulu, Hawaii 96819
Tel: (808) 848-6966 • Fax: (808) 848-6964
engineering@thermaleng.com

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Thermal Engineering Corporation

Kevin M. Machida
President/CEO



THERMAL ENGINEERING CORPORATION

512 Kalihi Street • Honolulu, Hawaii 96819
Tel: (808) 848-6966 • Fax: (808) 848-6964
engineering@thermaleng.com

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:


I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Thermal Engineering Corporation


Jeffrey K. Kohara
Sr. Vice President/CFO



THERMAL ENGINEERING CORPORATION

512 Kalihi Street • Honolulu, Hawaii 96819
Tel: (808) 848-6966 • Fax: (808) 848-6964
engineering@thermaleng.com

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Thermal Engineering Corporation

Brandt T. Paras
Vice President/COO



THERMAL ENGINEERING CORPORATION

512 Kalihi Street • Honolulu, Hawaii 96819
Tel: (808) 848-6966 • Fax: (808) 848-6964
engineering@thermaleng.com

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Thermal Engineering Corporation

David H. Niino
Vice President/CMO

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Ferraro Choi And Associates



William D. Brooks, AIA, LEED™ AP
Principal

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Ferraro Choi And Associates



Troy M. Miyasato, AIA
Principal

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

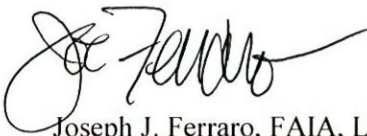
I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Ferraro Choi And Associates



Joseph J. Ferraro, FAIA, LEED™ AP
Principal

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement



ROSS ARCHITECTS LLC

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Ross Architects LLC

A handwritten signature in blue ink, appearing to read "Ross Yamamoto". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Ross Yamamoto, AIA
Owner

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

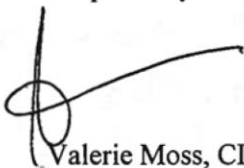
I am a licensed Insurance Agent in the State of Hawaii and have provided Professional and General Liability insurance policies for design professionals over the last 26 years. The Indemnity Clause in the State contract is posing a problem for the design professional because it is requiring the professional to "defend" the State for the liability of others. This is creating a liability exposure that is not covered by their insurance policies.

A design professional's E&O insurance only covers harm caused by the design professional's negligence; it does not allow for defending other parties before the negligence of the design professional is determined, and definitely does not cover damages caused by others who are not insured under the insurance policy. The current contract language provides an unacceptable risk, especially considering that the design professional will be held personally liable and can extend well into the professional's retirement.

I have learned that some large design firms have been advised by their legal department not to accept contracts where the Indemnity Clause includes "defend" as it puts an unfair burden on the design professional to accept liability in absence of negligence. Since the State derives benefit from these large firms's expertise, it will be losing a valuable component in the design process. There are states that do not have such contract requirements, and other states are currently revising their contract language to bring fairness to the contract.

I realize your committee is working to improve the business climate in Hawaii, and respectfully urge you to restore fairness to State contracts with design professionals. Thank you for the opportunity to express my view in SUPPORT of this bill.

Respectfully submitted,



Valerie Moss, CIC
Vice President

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,



John J. Ida
President
Urban Works, Inc.



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

Daniel S.C. Hong, PE
Sheryl E. Nojima, PhD, PE
Michael H. Nojima, PE, LEED AP
Audrey Y.T. Yokota, PE
Toby T. Hanzawa, PE, LEED AP
Gavin Y. Masaki, PE, LEED AP
Winston M. Taniguchi, PE

**201 Merchant Street, Suite 1900
Honolulu, Hawaii 96813-2926
Telephone: (808) 521-0306
Fax: (808) 531-8018
email@grayhongnojima.com
www.grayhongnojima.com**

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Michael H. Nojima, P.E.
Vice President



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

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February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Daniel S.C. Hong, P.E.
Chairman



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

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February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Sheryl E. Nojima, Ph.D., P.E.
President



12 February 2013

MEMORANDUM

TO: House Committee on Finance
Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson,
Vice Chairs; and Members of the House Committee on Finance

SUBJECT: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
House Hearing: Wednesday, February 13, 2:00 p.m., Conference Room 308

I am writing in strong SUPPORT of the passage of SB 504.

I am a practicing architect in the State of Hawaii, and have provided design services for a number of Hawaii State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Design Partners Incorporated

Principal
Duane T. Hamada
AIA, CSI, LEED AP

cc: Janice Marsters, Kennedy Jenks Consultants

Submitted testimony for HB137 on Feb 13, 2013 14:00PM

HB137

Submitted on: 2/12/2013

Testimony for FIN on Feb 13, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Chris J. Smith FAIA	Individual	Oppose	No

Comments: Thank you for reading my comments regarding HB 137

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Kennedy/Jenks Consultants

Engineers & Scientists

3375 Koapaka Street, Suite F227
Honolulu, Hawaii 96819
808-488-0477
FAX: 808-488-3776

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

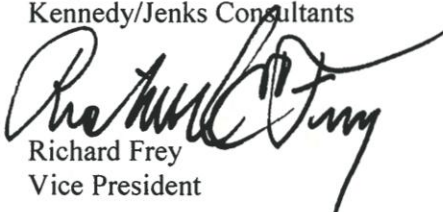
I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Kennedy/Jenks Consultants


Richard Frey
Vice President

HETHERINGTON ARCHITECTURE LLC



JOHN LAWRENCE HETHERINGTON

73-4428 MAMALAHOA HWY.
KAILUA KONA, HAWAII 96740
808-938-3498
hetharch@gmail.com
HAWAII LIC. AR-14938

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a newly licensed Architect in the State of Hawaii, and look forward to providing design services for State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Respectfully submitted,

Hetherington Architecture LLC,

John L Hetherington, Architect, AIA, HI license # AR 14938

shimokawa + nakamura

February 11, 2013



House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in **SUPPORT of HB 137.**

Sincerely,

SHIMOKAWA NAKAMURA, INC.

Jeffrey S. Nakamura, AIA
President

shimokawa + nakamura

February 11, 2013



House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in **SUPPORT of HB 137**.

Sincerely,

SHIMOKAWA NAKAMURA, INC.

Colin H. Shimokawa, AIA
Vice President



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.


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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

TERRANCE S. ARASHIRO, P.E.
President



AECOM
1001 Bishop Street
Suite 1600
Honolulu, HI 96813
www.aecom.com

808 521 3051 tel
808 524 0246 fax

February 11, 2013

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Respectfully submitted,
AECOM Technical Services, Inc.

Martin A. Nakasone
District Manager



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AECOM Technical Services, Inc.

Rae M. Loui
District Manager



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AECOM Technical Services, Inc.

Teuane Tominaga
District Manager



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Respectfully submitted,
AECOM Technical Services, Inc.

Rudolph Mina
District General Manager



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Paul K. Arita, P.E.
Vice President



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STANLEY T. WATANABE
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Eric Takamine
Civil Engineer



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STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
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AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Nikki Luong
Civil Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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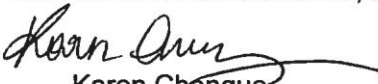
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Karen Chongue
Traffic Engineer

Grace Pacific
C O R P O R A T I O N
P.O. Box 78 / Honolulu, Hawaii 96810

Administrative Office (808) 674-8383 fax (808) 674-1040
Paving Office (808) 845-3991 fax (808) 842-3206
Quarry Office (808) 672-3545 fax (808) 672-3998



Via E-mail: FINTestimony@capitol.hawaii.gov
Via Fax: 1-800-535-3859

February 12, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED**, RELATING TO PROCUREMENT AS CURRENTLY DRAFTED. Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

HEARING
DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

Grace Pacific Corporation **strongly opposes** the passage of H.B. 137, Relating to Procurement, **and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness**. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be

increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, Grace Pacific Corporation strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.

Grace Pacific Corporation

A handwritten signature in black ink, appearing to read 'Raymond Nii', written over a faint horizontal line.

Raymond Nii
Manager, Engineering, Admin, IDIQ



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Leif Kohler
Traffic Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Stacy Hanai
Civil Engineer



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AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Eric K. Imada
Traffic Engineer



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By

JESSICA A. AGSALDA
CIVIL ENGINEER



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PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did, have recently revised their contract language to be more fair.

We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

DeAnna Hayashi, P.E.
Vice President and Chief Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Jordan-Lee Labuguen
Civil Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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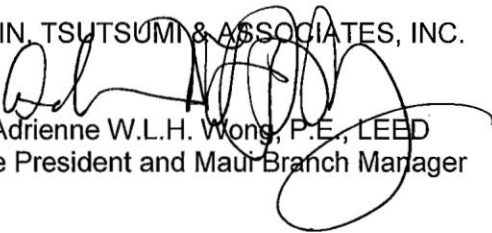
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Adrienne W.L.H. Wong, P.E., LEED
Vice President and Maui Branch Manager



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

KEITH K NIIYA, P.E.
Vice President



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 
Kendra Hanagami
Civil Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Garrett K. Tokuoka, P.E.
Project Manager



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Zey Tong
Civil/Traffic Engineer



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 12, 2013

House Committee on Finance

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB137, Relating to Procurement
Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Dear Chair Luke and Members of the Committees:

The Limtiaco Consulting Group (TLCG) is a local civil and environmental engineering firm and is proud to be voted as one of Hawaii's Best Places to Work. TLCG is an active member of the American Council of Engineering Companies of Hawaii (ACECH) as well as various local and national professional engineering organizations. TLCG principals believe it is important to give back to the communities we serve through meaningful volunteerism.

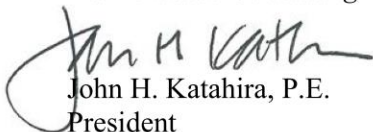
As a small business in Hawaii, we face numerous business challenges. One such challenge is addressed in HB137, Relating to Procurement.

As licensed professional engineers, we understand it is our duty to take responsibility for our errors and mistakes; however, the current State contract language requires us to pay for defense costs even if we are not responsible for damages. Not only is this not fair practice, it is not insurable meaning defense costs would need to be paid by company profits and our engineers could be held personally liable for damages even if our engineering services were completed without error. (Design professional PLI applies only when the engineer is negligent.) This onerous risk seriously jeopardizes the livelihood of our company, our employees, and our families.

Our company is so bothered with this contract provision that we declined a significant project with the Department of Transportation after being selected as the most qualified design professional. This project would have fueled the growth of our company in years to come. We were prepared to hire additional engineers locally or nationally, with the intent to do our part in reversing Hawaii's proverbial "brain drain."

We deeply appreciate your unwavering effort to improve Hawaii's business climate and I personally applaud your commitment to making our beautiful State, a better one. Thank you for an opportunity to express my concerns and mahalo for your favorable consideration of this bill.

Best always,
The Limtiaco Consulting Group, Inc.


John H. Katahira, P.E.
President

Submitted testimony for HB137 on Feb 13, 2013 14:00PM

HB137

Submitted on: 2/12/2013

Testimony for FIN on Feb 13, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Chun	Kauahikaua & Chun Architects	Support	No

Comments: Our small business supports HB 137 based on the testimony of ACECH and American Institute of Architects.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Neal Kasamoto, P.E.

Senior Transportation Engineer



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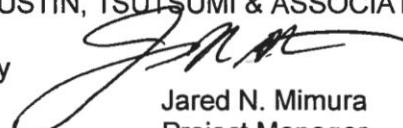
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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Jared N. Mimura
Project Manager

AMERICAN INSTITUTE OF ARCHITECTS

FIN
2:00 pm

February 13, 2013

Honorable Sylvia Luke, Chair
House Committee on Finance

Re: **House Bill 137**
Relating to Procurement

Dear Chair Luke and Members of the Committee,

My name is Daniel Chun, Government Affairs Chair of the American Institute of Architects (AIA) Hawaii State Council. AIA **SUPPORTS** HB 137 because it mitigates some problems unique to architect businesses.

The defense requirement is NOT INSURABLE.

Unlike most other liability insurance policies purchased by companies doing business with the state, architect-engineer liability policies are unique in that defense is not covered. We must pay these costs directly “out of our pockets.” The policies do cover our negligence when and if finally proven, so consumers and the state still have relief in case of our errors and omissions.

The defense requirement survives the life of the contract

The defense requirement may be acceptable as a general condition on other state contracts where a product, such as soap or toilet paper, is bought and consumed rather quickly. In the case of buildings and highways, the service life is measured in decades. Public buildings also have high public usage, thus increasing benefit to the taxpayer while increasing risk to the architect.

Passage of HB 137 will help small businesses

AIA members operate some 180 Hawaii businesses, all of which are small businesses because no one business dominates the market for architectural services. If defense costs must be absorbed by architects this can lead to only larger nationally-based businesses being able to afford the financial risk. AIA contends that it is in the public interest to encourage competition among businesses selling architectural services in Hawaii.

The current relief from the defense clause in contracts worth less than \$1 million does not prevent a subcontracting architect firm from having to defend the state due to “trickling down” of the defense clause. It is typical for design

contracts to include the services of several design subcontractors. Thus the more than \$1 million dollar prime contracts can have several smaller subcontracts worth much less than one million dollars. Yet we still must defend.

Passage of HB 137 is in the long-term public interest of the state of Hawaii, county agencies and consumers by ensuring competition among architects

Unlike some monopolist special interests that testify before the legislature, AIA wants to encourage competition for architectural services so that consumers have choices.

The current defense clause is a short-sighted contract requirement because in the long term, it can discourage potential architects and potential businesses selling design services. The number of new architect licensees is declining on both national and local levels, driven by high personal liability and low level of take-home pay. Fewer architects and fewer small businesses offering these services means less choice for the state, counties and consumers. Less choice means less competition based on experience, customer service and price.

AIA represents small architect businesses all over the state of Hawaii. Our members operate in every county seat to be close to their customers, county agencies and building projects. Our businesses are also a source of professional jobs that can be too scarce in some counties. Thus passage of SB 540 will in the long-term be more helpful to the state, counties and consumers than to architects individually. Thank you for this opportunity to **SUPPORT** House Bill 137.

A handwritten signature in cursive script, appearing to read "David Chen".



Hawaii Section
PO Box 917
Honolulu, HI 96808-0917

2013 Hawaii Section Officers

PRESIDENT

Ian Arakaki, P.E.

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e-mail: ian@tlcghawaii.com

PRESIDENT-ELECT

Brian Enomoto, P.E.

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(mail not deliverable)
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e-mail: benomoto@ascehawaii.org

VICE PRESIDENT

Glenn Miyasato, P.E.

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email: brasa@beltcollins.com

TREASURER

Tim Goshi, P.E.

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email: tgoshi@kaihawaii.com

PAST PRESIDENT

Dawn B. Szewczyk, P.E.

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GPMP
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(808) 472-1268
e-mail: Dawn.B.Szewczyk@gmail.com

YOUNGER MEMBER FORUM

PRESIDENT

Kurt Nagamine

e-mail: knagamine@ascehawaiiymf.org

February 13, 2013

Honorable Sylvia Luke, Chair
Honorable Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs
Honorable Members of the House Committee on Finance,

I am testifying in SUPPORT for House Bill 137 Relating to Procurement

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.

Many of the members either own or work for an engineering firm that would be classified as a small business. Much of their work is for state and county agencies on contracts regulated by the procurement code either as the prime consultant or part of a team of subconsultants working within many of the specialized areas of civil engineering. While contracted to perform work for a government body, the terms and conditions of their contractual relation may vary depending on the attorney's providing legal support.

House Bill 137 amends the public procurement code to prohibit a governmental body from requiring a contractor providing professional design services to indemnify the governmental body for the governmental body's negligence. The Bill would assure the consultant would not be required to defend the governmental agency for liability due to negligence or fault that is not the result of the consultant's actions.

I urge your support for House Bill 137. Thank you for the opportunity to present my testimony.

Owen Miyamoto, PE, FASCE
Local Legislative Liaison
3209 Paty Drive
Honolulu, HI 96822-1439
Phone: (808) 832-3726
Email: owen@hawaii.edu



HEALY TIBBITTS BUILDERS, INC.

General Contractors

99-994 Iwaena Street • Suite A • Aiea, Hawaii 96701
Telephone: (808) 487-3664 • Facsimile: (808) 487-3660

Via E-mail: FINTestimony@capitol.hawaii.gov
Via Fax: 1-800-535-3859

February 13, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED, RELATING TO PROCUREMENT AS CURRENTLY DRAFTED.** Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

Healy Tibbitts Builders, Inc. **strongly opposes** the passage of H.B. 137, Relating to Procurement, **and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness.** This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Honorable Sylvia Luke, Chair , Honorable Scott Nishimoto, Vice Chair &
Honorable Aaron Johanson, Vice Chair
House Committee on Finance
February 12, 2013
Page 2

Accordingly, Healy Tibbitts Builders, Inc. strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.

Very truly yours,
Healy Tibbitts Builders, Inc.

A handwritten signature in cursive script that reads "Richard A. Heltzel". The signature is written in black ink and includes a small circular mark at the end of the line.

Richard A. Heltzel
President



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did, have recently revised their contract language to be more fair.

We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 
Adam Luke
Traffic Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

TYLER FUJIWARA
Traffic Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

Kyle Shinyama
Civil Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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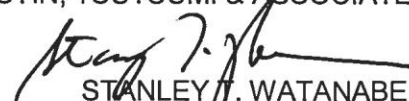
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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


STANLEY T. WATANABE
Vice President



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did, have recently revised their contract language to be more fair.

We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Name Title Zasha K. Jimenez
Civil Engineer

Date: FEBRUARY 13, 2013

To: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR,
HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE

From: ERIC G. TESSEM, SR. VICE PRESIDENT AND GENERAL MANAGER

Subject: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED**, RELATING TO
PROCUREMENT AS CURRENTLY DRAFTED. Prohibits governmental procurement contracts of
any amount that are exclusively for the services of engineers, architects, surveyors, or landscape
architects, from requiring the contractor to indemnify the governmental body against liability not
arising from the contractor's own negligence or fault.

Via E-mail: FINTestimony@capitol.hawaii.gov

Via Fax: 1-800-535-3859

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

dck pacific construction, LLC strongly opposes the passage of H.B. 137, Relating to Procurement, and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, dck pacific construction, LLC strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.



February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
MK ENGINEERS, LTD.

Aaron C. Hamada
Vice President



February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
MK ENGINEERS, LTD.

Paul K. Uyeda
Vice President



February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
MK ENGINEERS, LTD.

A handwritten signature in black ink, appearing to read 'Russell K. Mori', written in a cursive style.

Russell K. Mori
President

HILO DIRECT CONSULTANTS, LLC

Architecture · Construction Administration and Quality Assurance

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs;
and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,



J. Blaise Caldeira, AIA
HILO DIRECT CONSULTANTS, LLC

c: AIA Hawaii



ARCHITECTURE
RESTORATION
RENOVATION
RESEARCH

Mason Architects

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State projects. I would like to speak out in support of this bill.

Current State contracts force us to agree defend the State even though this is uninsurable. Requiring design firms to defend the State in absence of negligence is more than unfair, it is absurd, especially since the costs of such a defense can be ruinous to many firms. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals.

Sincerely,

Glenn E. Mason, AIA
President
License #A4073



Via E-mail: FINTestimony@capitol.hawaii.gov

Via Fax: 1-800-535-3859

February 13, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR,
HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED**, RELATING TO
PROCUREMENT AS CURRENTLY DRAFTED. Prohibits governmental procurement contracts
of any amount that are exclusively for the services of engineers, architects, surveyors, or
landscape architects, from requiring the contractor to indemnify the governmental body against
liability not arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

MEGA CONSTRUCTION, INC. strongly opposes the passage of H.B. 137, Relating to Procurement, **and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness.** This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, MEGA CONSTRUCTION, INC. strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.



Paul M. Donoho, Architect, LLC
P.O. Box 1727
Honoka'a, HI 96727

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Paul M. Donoho, Architect, LLC

Paul Donoho
President



February 12, 2013
13E-054

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Dear Chair Luke and Members of the Committee:

TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

My colleagues at Belt Collins and I are practicing engineers and landscape architects in the State of Hawai'i, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for services provided, but inclusion of the word "defend" in an indemnity clause, and requiring the design professional to indemnify the State for the liability of others, creates liability that is not covered by the design professional's PLI.

A design professional's PLI only covers harm caused by the design professional's negligence. The PLI will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The State's current contract language provides an unacceptable risk, especially considering that design professionals are personally liable, and that this liability can follow the individual into retirement.

Because the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawai'i, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of HB 137, Relating to Procurement.

Respectfully submitted,

BELT COLLINS HAWAII LLC

A handwritten signature in black ink, appearing to read "Cheryl M. Palesh".

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

CMP:jdk



AKINAKA & ASSOCIATES, LTD.
CONSULTING ENGINEERS
Civil Engineering • Land Planning

3375 KOAPAKA STREET, SUITE B-206, HONOLULU, HAWAII 96819 • TELEPHONE (808) 836-1900 • FAX (808) 836-8852

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. I have also had the privilege to work for many years in various levels within the County and State governments.

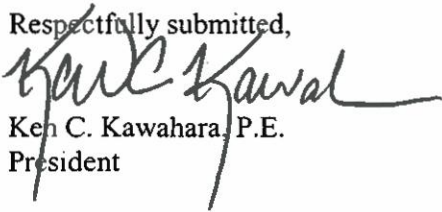
In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,


Ken C. Kawahara, P.E.
President



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

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House Committee on Finance

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Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By *Allison Ichikawa*

Name *Allison Ichikawa*
Title *Civil Engineer*



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
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House Committee on Finance

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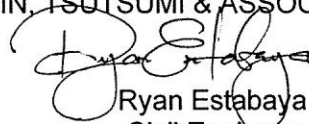
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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By


Ryan Estabaya
Civil Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

Kellen Mira
Civil Engineer

February 13, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE



SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED**, RELATING TO PROCUREMENT AS CURRENTLY DRAFTED. Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

Royal Contracting Co., Ltd., **strongly opposes** the passage of H.B. 137, Relating to Procurement, **and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness**. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

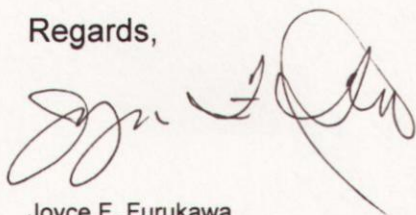
H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, Royal Contracting Co., Ltd., strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.

Regards,

A handwritten signature in black ink, appearing to read 'Joyce F. Furukawa', written in a cursive style.

Joyce F. Furukawa
Treasurer & Controller
Royal Contracting Co., Ltd.

35% COTTON



BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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Greg Thielen
Complete Construction Services Corp.

President-Elect

Brian Adachi
BKA Builders, Inc.

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Hunt Building Company, Ltd.

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Karen T. Nakamura
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C&J Contracting, Inc.

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Marshall Hickox

Homeworks Construction, Inc.

Michael Watanabe

JW, Inc.

Ryan Engle

Bays Lung Rose & Holma

Scotty Anderson

Pacific Rim Partners

W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committee on Finance Wednesday, February 13, 2013

2:00 p.m.

State Capitol - Conference Room 308

RE: H.B. 137, RELATING TO PROCUREMENT

Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **opposes** H.B. 137, as written. H.B. 137 proposes to prohibit governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

BIA-Hawaii supports the inclusion of contractors, as defined under Chapter 444-1, HRS, into this proposed measure. H.B. 137 relieves design professionals of the obligation to defend the State because the financial burden of paying for the defense of the State is too great. The same rationale should apply to contractors.

H.B. 137 unfairly shifts the financial burden of defending the State onto local contractors. The obligation to defend the state should either apply to all of the parties involved in a project, or none.

Under Hawaii law, a party that owes a duty to defend must provide that defense even if there is only the potential for the party to be liable. Whether the party paying for the defense is ultimately liable is irrelevant to the determination of whether the duty is owed.

Under H.B. 137, a contractor could be responsible for paying for the State's defense even though the design professional was primarily responsible for the damage. However, the design professional would have no such obligation at all.

Representative Sylvia Luke, Chair
Committee on Finance
Wednesday, February 13, 2013
H.B. 137

In Hawaii, the duty to defend contained in State contracts has imposed a substantial burden on local contractors. When the State has been sued in the construction context, the State has tendered its defense to contractors. Those contractors have had to pay the attorneys' fees and costs incurred by the State even if it has been clear, from the start, that the contractor is not primarily responsible for the problem.

Furthermore, Commercial General Liability policies carried by contractors do not cover the defense obligation; as a result, contractors have to pay for these defense costs out of pocket and without the benefit of insurance coverage.

Based on the foregoing reasons, BIA-Hawaii **opposes** H.B. 137, as written, and respectfully requests the committee include construction contractors as a part of this measure.

Thank you for the opportunity to express to you our views.

ROTH KIMURA, LLP

PO Box 624 Holualoa, HI 96725
808-324-6073 808-324-6078 fax
kimura@alum.mit.edu

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for an important State and County project. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Kari L. Kimura, AIA, LEED-AP
Partner



Written Statement of
Dr. Patrick K. Sullivan
Founder & Chairman
Oceanit
before the
HOUSE COMMITTEE ON FINANCE
February 13, 2013, 02:00 PM
State Capitol, Conference Room 308
In Support of
HB 137 Relating to Procurement

To: Chair Luke and Members of the Committee
From: Dr. Patrick K. Sullivan, Founder & Chairman, Oceanit
Re: **Testimony in Support of HB 137 Relating to Procurement**

Honorable Chair, Vice-Chairs and Committee Members:

Thank you for the opportunity to submit testimony in **support** of **HB 137**.

I am a practicing engineer in the State of Hawaii and I have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the House and Senate to improve the business climate in Hawaii, and respectfully urge you to restore fairness to State contracts with design professionals. Thank you for the opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Patrick K. Sullivan, Ph.D., P.E.

Founder & Chairman

Oceanit





THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 12, 2013

House Committee on Finance

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB137, Relating to Procurement
Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Dear Chair Luke and Members of the Committees:

The Limtiaco Consulting Group (TLCG) is a local civil and environmental engineering firm serving our community since 1997. TLCG is an active member of the American Council of Engineering Companies of Hawaii (ACECH) as well as various local and national professional engineering organizations.

As a small business in Hawaii, we face numerous business challenges. One such challenge is being addressed in HB137, Relating to Procurement.

As licensed professional engineers, we understand it is our duty to take responsibility for our errors and mistakes; however, the current State contract language requires us to pay for defense costs even if we are not responsible for damages. Not only is this not fair practice, it is not insurable meaning defense costs would need to be paid by company profits and our engineers could be held personally liable for damages even if our engineering services were completed without error. (Design professional PLI applies only when the engineer is negligent.) This onerous risk seriously jeopardizes the livelihood of our company, our employees, and our families.

Our company is so bothered with this contract provision that we declined a significant project with the Department of Transportation after being selected as the most qualified design professional. This project would have fueled the growth of our company in years to come. We were prepared to hire additional engineers locally or nationally, with the intent to do our part in reversing Hawaii's proverbial "brain drain."

We deeply appreciate your unwavering effort to improve Hawaii's business climate and I personally applaud your commitment to making our beautiful State, a better one. Thank you for an opportunity to express my concerns and mahalo for your favorable consideration of this bill.

Best always,
The Limtiaco Consulting Group, Inc.

Kyle H. Kaneshiro, P.E.
Principal

1132 Bishop Street Suite 1850
Honolulu Hawaii 96813 USA

T. +1 808 536 1737
F. +1 808 537 5829
honolulu@wspgroup.com
www.wspgroup.com

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

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Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
WSP Hawaii Inc,



Gene Albano, PE LEED®
President

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I have worked as an engineer in the State of Hawaii for more than 20 years, and have provided design services for a number of State and County projects. I am also the current Chair of the American Council of Engineering Companies' national Risk Management Committee, and am very familiar with risk management issues affecting design professionals throughout the country.

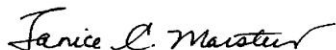
Many of the terms in the State's contract for design professionals are appropriate for construction contractors but should not be applied to design professionals. Design professional liability insurance (PLI) covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The State requires design professionals to obtain PLI for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

The current State contract language provides an unacceptable risk, especially considering that we design professionals hold personal professional licenses and are personally liable, and that this liability follows us into retirement. Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable.

It is simply not fair to require design professionals to pay for damages or up-front costs to defend the State if the design professional has done nothing wrong. Many states do not have contract requirements for indemnification of government, and other states have recently revised their contract language to bring fairness to contracts.

We appreciate the continuing efforts of our State Legislators to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Kennedy/Jenks Consultants



Janice C. Marsters, Ph.D.
Sr. Environmental Engineer

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 13, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION AND SUGGESTED AMENDMENTS TO H.B. 137, RELATING TO PROCUREMENT.** Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is **opposed** to the passage of H.B. 137, Relating to Procurement, as currently proposed and would like to request attached amendments **to remove any requirement to indemnify the state under contracts awarded to persons licensed under Chapter 444, HRS for Licensed Contractors.** This bill proposes to prohibit any governmental procurement contracts that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

Background

In 2007, the legislature passed S.B. 17, SD2, HD2, CD1 which was enacted as Act 246, Session Laws of Hawaii, 2007. Although, GCA had concerns with the bill at that time, the GCA did not oppose the bill since the rationale given for its enactment was to permit small engineering and architectural firms and sole proprietorships the ability to bid on state public works contracts. It was believed that those smaller engineering and architectural firms would not be able to do otherwise because of their inability to obtain liability insurance with the requirement to indemnify the state. Thus, a limit of one million dollars (\$1,000,000) was placed on the no indemnification provision. This bill proposes to undue the original intent of Act 246 (2007),

significantly changing the impact to those involved in direct procurement of public works projects with the state, particularly the general contractor.

H.B. 137 and Requested Amendments

The current bill, H.B. 137 proposes to remove the \$1,000,000 limitation such that all contracts between the state and all engineers, architects, surveyors and landscape architects who enter into contracts with the state could no longer provide that they be required to indemnify the state.

Enactment of this bill, as proposed, would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state and may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

An example of the inequity of this situation is that a design professional would only be required to defend and pay for its own negligence or omissions, while the construction contractor, who may be entirely faultless, or not even named as a party in the suit would be required to defend the state and pay all the damages awarded against the state.

The GCA believes that no awardee of a state contract should be required to indemnify the state, and that each party named in a suit which names the state as a party, be responsible to pay only its share of damages, resulting from its own negligent action.

In an effort to ensure fairness, GCA respectfully requests the adoption of the attached proposed amendments. **The GCA is in opposition as the bill is currently written and would support, to remove any requirement to indemnify the state under contracts awarded to persons licensed not only under Chapter 464 for Professional engineers, architects, surveyors and landscape architects, but under Chapter 444, HRS for Licensed Contractors as well.**

Thank you for this opportunity to provide our views on this measure.

STATE OF HAWAII

A BILL FOR AN ACT

Relating to procurement.

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

SECTION 1. The legislature finds that governmental procurement contracts for the services of engineers, architects, surveyors, and landscape architects and contractors who bid on public works contracts often require ~~design~~ professionals to indemnify and defend governmental entities when the ~~design professional~~ awardee is not negligent or at fault.

The legislature further finds that such contract terms are detrimental to the State in the long term, and negatively affect procurement, project costs and quality, and innovation. ~~Also, such contract terms are uninsurable through professional liability insurance required by governmental entities, limiting the recovery available to the government.~~

The legislature further finds that, while some state agencies recognize the negative implications and have removed these terms, inconsistency between agencies and departments slows the procurement process and creates a climate of unreasonable risk and uncertainty ~~for Hawaii's design professionals.~~

The purpose of this Act is to prohibit indemnification clauses in governmental procurement contracts that are entered into with professionals who hold licenses under Chapter 444 and 464, HRS exclusively for the services of engineers, architects, surveyors, or landscape architects, unless the liability arises from the contractor's own negligence or fault.

SECTION 2. Chapter 103D-713, Hawaii Revised Statutes, is amended to read as follows:

"~~[H]~~**§103D-713** **Defense of a governmental body.** (a) ~~[No]~~ On or after the effective date of this Act, no contract [of less than \$1,000,000] that is entered into [on or after July 1, 2007,] by any governmental body, and is exclusively for services that may only lawfully be provided by ~~with~~ a person licensed under chapters 444 or 464, HRS may require the contractor to defend the governmental body, or its officers, employees, or agents, from any liability, damage, loss, or claim, action, or proceeding arising out of the contractor's performance under the contract.

(b) Subsection (a) notwithstanding, the contract may require the contractor providing the services to indemnify and hold harmless the governmental body and its officers, employees, and agents from and against any liability, damage, loss, cost, and expense, including reasonable

attorneys' fees, and all claims, suits, and demands therefor arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the contractor, the contractor's employees, officers, agents, or subcontractors in the performance of the contract or the contractor's professional services, and the provisions may remain in full force and effect notwithstanding the expiration or early termination of the contract.

(c) No person licensed under chapter ~~444~~ or 464 that has agreed in any contract to defend a governmental body, including those contracts ~~of less than \$1,000,000 entered into before or~~ after July 1, ~~2007~~2013, shall be required to defend the governmental body in a lawsuit ~~filed more than ten years beyond the substantial completion of the project,~~ except that this subsection shall not apply to any lawsuit that has been filed prior to July 1, ~~2013~~07.

(d) As used in this section, "person" means any person, partnership, corporation, or other entity conducting business in the State.

(e) As used in this section, "governmental body" means this State and all agencies thereof, any public body corporate within this State and all agencies thereof, and any non-incorporated public body within this State of whatever nature and all agencies thereof. "Governmental body" includes but is not limited to cities, counties, school districts, authorities, universities and community colleges, and their employees and agents, including but not limited to other business entities retained by or contracting with the public entity to manage or administer the contract for the public entity."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Procurement Contracts; Liability

Description:

Prohibits governmental procurement contracts of any amount that are exclusively for the services of general contractors, engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
HDR Engineering, Inc.



Sheila K. Uyeoka, P.E.
Associate | Project Manager Engineer

February 13, 2013

Senate Committee on Judiciary and Labor

Honorable Senators Clayton Hee, Chair; Maile S. L. Shimabukuro, Vice Chair; and Members of the Senate Committee on Judiciary and Labor

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**

Dear Chair Hee and Members of the Committees:

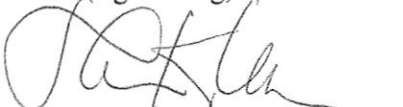
I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
HDR Engineering, Inc.



Sheila K. Uyeoka, P.E.
Associate | Project Manager Engineer

Submitted testimony for HB137 on Feb 13, 2013 14:00PM

HB137

Submitted on: 2/12/2013

Testimony for FIN on Feb 13, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Furst	Allana Buick & Bers	Support	No

Comments: Dear Chair Luke and Members of the Committee: I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance. A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement. Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract. We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill. Respectfully submitted, Allana Buick & Bers Richard Furst Project Manager

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

The American Council of Engineering Companies of Hawaii (ACECH) represents almost 70 member firms with over 1,300 employees throughout Hawaii. ACECH's member firms are comprised of engineers who are at the forefront of their particular disciplines, and who have specialized experience in the geography, resources, and design requirements of Hawaii and the Pacific region. Projects designed by design professionals directly affect the quality of the water we drink and the food we eat; the safety of our buildings, highways, bridges, and infrastructure; and the quality of the environment in which we work and play. Most projects start as problems or opportunities in need of solutions. Design professionals have the expertise to develop viable solutions to society's problems.

Design professionals who conduct work for the State do so under contract using the State's "General Conditions" (Document AG-008, revised 4/15/2009). A set of contract terms and conditions primarily developed for use in contracts with construction contractors make up the State's General Conditions. However, the legal rights and responsibilities are very different for design professionals. **Many of the terms in the current General Conditions are not applicable to or appropriate for the services provided by design professionals, and are not covered by professional liability insurance policies.** The situation is completely different for contractors, whose insurance provides broader coverage.

We want to emphasize that this bill does not contain any new concepts, but simply suggests changes to a bill previously passed by the State Legislature in 2007. ACECH worked with the Legislature to pass a bill that became law (HRS §103D-713), prohibiting governmental bodies from requiring design professionals to defend the government, and that also linked our liability to our negligence. The bill covered only contracts less than \$1 million. In the years since the relief provided by that bill, we have seen continuing issues:

- Many of our small local firms are still subject to the unfair contract language when they serve as sub-consultants on projects with contracts greater than \$1 million.
- The unfair contract terms do not favor teams of local small firms that often band together to pursue larger projects, but would each individually be subject to the onerous contract terms. This favors larger, out-of-state firms that can afford to "self-insure".
- Many of our best firms decline to do work for the State under the unfair contract terms, negatively impacting the procurement process, and potentially increasing costs to the State as less firms are "in the pool" of qualified consultants.
- Many agencies are unsure if HRS §103D-713 applies to them, and firms frequently struggle to have the applicable language used in contracts, slowing down the procurement process.
- An unreasonable risk climate serves to limit innovative design, since engineers are more likely to stick to "tried-and-true" solutions to avoid potential risk. Since the State has clearly seen the link between economic growth and commercial technological advances and innovation, as evidenced by various innovation programs, the stifling of local

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

Page 2 of 2

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Website: www.acechawaii.org

The State and Counties require design professionals to obtain professional liability insurance (PLI) for our work. However, inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement. In situations not covered by PLI, design professionals must cover claims from their own pockets, severely limiting the recovery available to the State. It is in the best interest of the State to utilize reasonably insurable contract terms so that PLI coverage applies.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong.

Most states do not have such contract requirements, and other states, including Florida and Michigan, recently revised their contract language to bring fairness to their public contracts, in light of recent onerous court decisions across the country. The City and County of Honolulu recently revised their indemnification clause for design professionals, in line with what we are requesting in this bill, citing a desire to have the largest pool of design consultants willing to do work for City departments.

In conclusion, requiring design professionals to sign contracts containing uninsurable terms that shift an unreasonable degree of risk to the design professional is poor public policy and has no public benefit. For State and County public works projects, the main beneficiary of design professional services is the public. Design professionals receive a limited short-term financial benefit, compared to the very long-lasting benefit to the State and its citizens. In many cases, the owner's maintenance activities and upgrades affect the project's risk profile far more than does the initial design. Risk exists for all projects. All parties, including the public owners, should assume their fair share of the risk.

We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII



Terrance Arashiro, P.E.
President



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February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, providing design services for State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance. It also sets precedent for Counties who follow State policy.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. I understand most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

I appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you to restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Palmer W. Hafdahl, AIA



general contractor license #ABC 21576

Via E-mail: FINTestimony@capitol.hawaii.gov

Via Fax: 1-800-535-3859

February 12, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED, RELATING TO PROCUREMENT AS CURRENTLY DRAFTED.** Prohibits governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

LYZ, Inc. strongly opposes the passage of H.B. 137, Relating to Procurement, and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, LYZ, Inc. strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.

A handwritten signature in black ink, appearing to read 'James N. Kurita', is written over a circular scribble.

James N. Kurita
Vice President/COO

NOLA ENGINEERING, LLC

John K. Maute, P.E.
Electrical Engineer
P.O. Box 342
Laupahoehoe, HI 96764
(808) 962-0022

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing electrical engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committee and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

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

MIYASHIRO AND ASSOCIATES, INC.

∩ MECHANICAL ENGINEERING CONSULTANTS ∩

February 13, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: TESTIMONY IN SUPPORT of HB 137, Relating to Procurement

Dear Chair Luke and Members of the Committee:

I am a practicing consulting Mechanical Engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We find this requirement to be so potentially damaging, that we have declined projects from the State, in the past, that included this requirement.

We appreciate the continuing efforts of your committee and the members of the House to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,
Miyashiro and Associates, Inc.

Malcolm Miyashiro
President

TANIMURA & ASSOCIATES, INC.

Consulting Structural Engineers

925 Bethel Street Suite 309 Honolulu, Hawaii 96813

Telephone (808) 536-7692 Fax (808) 537-9022

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Sincerely,
Tanimura & Associates, Inc.



Thomas Y. Tanimura
President



ERNEST M. UMEMOTO AIA
Architect, Inc.

2/12/13

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Yours truly,

Ernest M. Umemoto, AIA

KING & NEEL, INC.

1164 Bishop Street * Suite 1710 * Honolulu, Hawaii 96813
Phone: (808) 521-8311
Fax: (808) 526-3893



Via E-mail: FINTestimony@capitol.hawaii.gov
Via Fax: 1-800-535-3859

February 13, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO,
VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND
MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO H.B. 137 & AMENDMENTS PROPOSED,**
RELATING TO PROCUREMENT AS CURRENTLY DRAFTED. Prohibits
governmental procurement contracts of any amount that are exclusively for the
services of engineers, architects, surveyors, or landscape architects, from
requiring the contractor to indemnify the governmental body against liability not
arising from the contractor's own negligence or fault.

HEARING

DATE: Wednesday, February 13, 2013
TIME: 2:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

King & Neel, Inc. **strongly opposes** the passage of H.B. 137, Relating to Procurement, **and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness.** This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

H.B. 137 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state. The result would be increased insurance costs for the contractor and the state. It may also result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works contracts.

Accordingly, King & Neel strongly opposes H.B. 137 as currently drafted and requests that GCA's amendments be adopted.

Thank you for the opportunity to offer our comments on this matter.

Testimony to the House Committee on Finance
Wednesday, February 13, 2013
2:00 p.m.
State Capitol - Conference Room 308

RE: H.B. 137, RELATING TO PROCUREMENT

Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

Waltz Engineering, Inc. **opposes** H.B. 137, as written. H.B. 137 proposes to prohibit governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

BIA-Hawaii supports the inclusion of contractors, as defined under Chapter 444-1, HRS, into this proposed measure. H.B. 137 relieves design professionals of the obligation to defend the State because the financial burden of paying for the defense of the State is too great. The same rationale should apply to contractors.

H.B. 137 unfairly shifts the financial burden of defending the State onto local contractors. The obligation to defend the state should either apply to all of the parties involved in a project, or none.

Under Hawaii law, a party that owes a duty to defend must provide that defense even if there is only the potential for the party to be liable. Whether the party paying for the defense is ultimately liable is irrelevant to the determination of whether the duty is owed.

Under H.B. 137, a contractor could be responsible for paying for the State's defense even though the design professional was primarily responsible for the damage. However, the design professional would have no such obligation at all.

In Hawaii, the duty to defend contained in State contracts has imposed a substantial burden on local contractors. When the State has been sued in the construction context, the State has tendered its defense to contractors. Those contractors have had to pay the attorneys' fees and costs incurred by the State even if it has been clear, from the start, that the contractor is not primarily responsible for the problem.

Furthermore, Commercial General Liability policies carried by contractors do not cover the defense obligation; as a result, contractors have to pay for these defense costs out of pocket and without the benefit of insurance coverage.

Based on the foregoing reasons, Waltz Engineering, Inc. **opposes** H.B. 137, as written, and respectfully requests the committee include construction contractors as a part of this measure.

Thank you for the opportunity to express to you our views.



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
IVAN K. NAKATSUKA, P.E.
ADRIENNE W. L. H. WONG, P.E., LEED AP
KEITH K. NIIYA, P.E.
DEANNA HAYASHI, P.E.
PAUL K. ARITA, P.E.

February 12, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing civil engineer in the State of Hawaii, and have provided design services for a number of State and County projects. Austin, Tsutsumi & Associates, Inc. is a 60 person local design firm, practicing in Hawaii since 1934. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and some states that did, have recently revised their contract language to be more fair.

We appreciate the continuing efforts of your committees and the members of the House of Representatives to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 
Kurt Nagamine
Civil Engineer

KATAYAMA & ASSOCIATES, INC

681 South King Street, Suite 203 • Honolulu, Hawaii 96813-3016 • Telephone (808) 521-5086 Fax (808) 521-1713

February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I am a practicing Consulting Mechanical Engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done nothing wrong. Most states do not have such contract requirements, and other states have recently revised their contract language to bring fairness to the contract.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,

Katayama & Associates, Inc.



Kevin K. Katayama
President

Submitted testimony for HB137 on Feb 13, 2013 14:00PM

HB137

Submitted on: 2/12/2013

Testimony for FIN on Feb 13, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Ken K. Kurokawa	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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February 11, 2013

House Committee on Finance

Hearing Date: Wednesday, February 13, 2:00 p.m., Conference Room 308

Honorable Representatives Sylvia Luke, Chair; Scott Y. Nishimoto and Aaron Ling Johanson, Vice Chairs; and Members of the House Committee on Finance

Subject: **TESTIMONY IN SUPPORT of HB 137, Relating to Procurement**

Dear Chair Luke and Members of the Committee:

I have been a local professional civil engineer specializing in the field of sanitary engineering for the past 33 years. I have provided important and often critical wastewater design services for numerous City and County of Honolulu, County of Maui, County of Kauai, and State of Hawaii projects. I am currently a vice president with HDR Engineering, Inc. and would like to express my support for HB 137.

I am very concerned about the State's contract language for design professionals, as well as similar county contract language patterned after the State's contract language. The contract language that requires design professionals to obtain professional liability insurance for consulting work, but also includes the word "defend" in an indemnity clause and requires us to indemnify the State and counties for the liability of others, creates liability that is not covered by our insurance. Design professionals should only be required to indemnify our clients when the design professional is at fault or negligent.

The inclusion of uninsurable clauses increases consultant design fees due to the need to cover the substantial amount of added risk. It may also reduce the availability of services from a number of competent consulting firms that are unable or unwilling to take on uninsurable risks. The resulting higher design costs for government contracts ultimately hurts the taxpayers and general public.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you support HB 137 Relating to Procurement. Thank you very much for this opportunity to express my concerns and for your consideration of this important bill.

Respectfully submitted,



Roy K. Abe, P.E.
46-291 Kupale Street
Kaneohe, Hawaii 96744