



**STATE OF HAWAII
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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEES
ON
ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING
AND
COMMERCE AND CONSUMER PROTECTION

February 6, 2013

2:45 p.m.

SB 504

RELATING TO PROCUREMENT.

Chair Dela Cruz, Chair Baker, Vice-Chair Slom Vice-Chair Galuteria, and members of the committees, thank you for the opportunity to submit testimony on SB 504. 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 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.

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENTAL OPERATIONS AND HOUSING

Sen. Donovan M. Dela Cruz, Chair

Sen. Sam Slom, Vice Chair

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Sen. Rosalyn H. Baker, Chair

Sen. Brickwood Galuteria, Vice Chair

Wednesday, February 6, 2013

2:45 p.m.

SB 504

Chair Dela Cruz, Vice Chair Slom, and members of the Committee on Economic Development, Governmental Operations and Housing, and Chair Baker, Vice Chair Galuteria, and members of the Committee on Commerce and Consumer Protection, my name is Michael Tanoue, counsel for the Hawaii Insurers Council, 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** SB 504.

SB 504 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.

SB 504 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 SB 504, these same professionals may not be required to defend governmental bodies in contracts of any amount.

SB 504 does **not** alter subsection (b), regarding a contractor's obligation to indemnify and hold harmless the governmental bodies.

The Hawaii Insurers Council objects to SB 504 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 SB 504. Indeed, SB 504 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 SB 504 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).

SB 504 does **not** accomplish this stated purpose. Rather, as explained above, SB 504 seeks to amend subsection (a) of Section 103D-713 regarding contractual obligations to defend a governmental body. SB 504 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 SB 504 and requests that it be held. Thank you for the opportunity to testify.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 6, 2013

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE SAM SLOM, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

HONORABLE ROSALYN BAKER, CHAIR, HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SUBJECT: **OPPOSITION AND SUGGESTED AMENDMENTS TO S.B. 504, 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 6, 2013
TIME: 2:45 p.m.
PLACE: Conference Room 016

Dear Chairs Dela Cruz and Baker, Vice Chairs Slom and Galuteria 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 S.B. 504, as currently drafted but would support it if the attached amendments **that also remove any requirement for contractors licensed under Chapter 444, HRS to have to indemnify the state**, are included. This bill, as currently drafted, proposes to prohibit any governmental procurement contracts that are exclusively for the services of engineers, architects, surveyors, or landscape architects (hereinafter "design professionals") from requiring those design professionals to indemnify the governmental body against liability not arising from the design professional'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.

S.B. 504 and Requested Amendments

The current bill, S.B. 504 proposes to remove the \$1,000,000 limitation, such that contracts between the state and all engineers, architects, surveyors and landscape architects would no longer require indemnifying the state.

Enactment of this amendment would leave construction contractors, as the only major party still required by contract to indemnify the state and shifts the indemnification burden entirely on the construction contractor. The result could be increased insurance costs for the contractor and the state and may result in some construction 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 as currently written but would support it if the attached amendment, or a substantially similar amendment, is incorporated therein.**

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~~[H]~~ **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, 2007.

(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.

Proposed Changes include Contractors who bid on Public Works Contracts



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February 5, 2013

Honorable Donovan M. Dela Cruz, Chair
 Honorable Sam Slom, Vice Chair
 Honorable Members of the Senate Committee on Economic Development,
 Government Operations and Housing,

Honorable Rosalyn H. Baker, Chair
 Honorable Brickwood Galuteria, Vice Chair
 Honorable Members of the Senate Committee on Commerce and Consumer
 Protection,

I am testifying in SUPPORT for Senate Bill 504 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.

Senate Bill 504 amends the public procurement code to prohibit a governmental body from requiring a contractor providing design professional 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 Senate Bill 504. Thank you for the opportunity to present my testimony.

Owen Miyamoto, PE, FASCE
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Civil Engineers – Designers and Builders of the Quality of Life



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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 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. 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. 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.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

Page 2 of 2

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In 2007, ACECH worked with the State 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 may 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 situations. Since the State administration has clearly seen the link between economic growth and commercial technological advances and innovation, as evidenced by various innovation programs, the stifling of local engineering firms through such onerous contract terms is counterproductive.

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 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,
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII



Terrance Arashiro, P.E.
President

February 3, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees;

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 SB 504, 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 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,
Coalition of Hawaii Engineering & Architectural Professionals
Lester H. Fukuda, P.E., FACEC

Lester Fukuda



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan Dela Cruz, Chair; Sam Slom, Vice Chair; and Senate committee members

Senate Committee on Commerce and Consumer Protection

Honorable Senators Rosalyn H. Baker, Chair; Brickwood Galuteria, Vice Chair; and Senate committee members

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, 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 being addressed in SB504, Relating to Procurement.

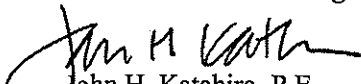
As licensed professional engineers, we understand it is our duty to take responsibility for our mistakes; however, the current State contract language requires us to pay for defense costs even if we are not responsible for damages. Not only is this not fair, it is not insurable meaning defense costs 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 to perfection. (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



THE LIMTIACO CONSULTING GROUP
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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.

Our company has in-fact turned down work for the State of Hawaii because this clause could not be negotiated. This means that the State's top selection for this work did not complete the project and instead was completed by a Consultant that was ranked lower during the selection process.

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.

SB 504
February 5, 2013
Page 2

Respectfully submitted,
The Limtiaco Consulting Group, Inc.

A handwritten signature in black ink, appearing to read 'Ian Y. Arakaki', with a stylized flourish at the end.

Ian Y. Arakaki, P.E.
Principal



February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

PRINCIPALS

Francis S. Oda, Arch.D.,
FAIA, AICP, LEED AP

Norman G.Y. Hong
AIA

Sheryl B. Seaman
AIA, ASID, LEED AP

Hitoshi Hida
AIA

Roy H. Nihei
AIA, CSI, LEED AP

James I. Nishimoto
AIA

Stephen Yuen
AIA

Linda C. Miki
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George I. Atta
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Charles Y. Kaneshiro
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Christine Mendes Ruotola
AICP, LEED AP

James L. Stone, Arch.D.,
AIA, LEED AP

Katherine M. MacNeil
AIA, LEED AP

Tom Young, MBA
AIA

Paul T. Matsuda
PE, LEED AP

OF COUNSEL

Ralph E. Portmore
FAICP

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

Group 70 International, Inc. is a practicing architectural and engineering firm in the state of Hawaii with a total of 48 architects and engineers. We 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,
Group 70 International, Inc.

A handwritten signature in cursive script that reads "Linda Miki".

Linda C. Miki, AIA
President/COO



February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

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PE, LEED AP

OF COUNSEL

Ralph E. Portmore
FAICP

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,

Group 70 International, Inc.

Paul T. Matsuda, P.E., LEED AP
Principal



February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

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Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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 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,
Group 70 International, Inc.

Sheryl B. Seaman
Principal



GROUP 70
INTERNATIONAL

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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ATA

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OF COUNSEL

Ralph E. Portmore
FAICP

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

Our firm provides professional services in architecture and civil engineering in the State of Hawaii, and we have designed many State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, we are 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,

GROUP 70 INTERNATIONAL, INC.

Jeffrey H. Overton, AICP, LEED-AP
Principal



February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donavan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

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Tom Young, MBA
AIA

Paul T. Matsuda
PE, LEED AP

OF COUNSEL

Ralph E. Portmore
FAICP

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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 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,

Group 70 International, Inc.

Francis S. Oda, Arch. D., FAIA, AICP, LEED AP
Chairman

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

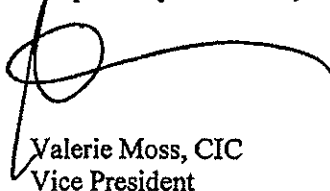
I am a licensed Insurance Agent in the State of Hawaii and have provided Professional and General Liability insurance policies for design professionals over the last 26 years. The Indemnity Clause in the State contract is posing a problem for the design professional because it is requiring the professional 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 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

HILO DIRECT CONSULTANTS, LLC

Architecture · Construction Administration and Quality Assurance

05 FEBRUARY 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

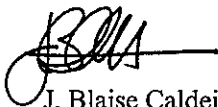
I am a practicing Architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but 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 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

Architectural Diagnostics Ltd.

Building Diagnostics · Failure Analysis · Remedial Architecture · Architecture

5 February 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

SUBJECT: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing architect in the State of Hawaii, and have provided design services for a very limited number of State projects and for no County projects, in spite of having been practicing in Hawaii for for 43 years 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 DAGS, UH and City representatives 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 deal with, 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 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,

ARCHITECTURAL DIAGNOSTICS, ITD.

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

Jim Reinhardt
Its President

SB504

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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. Some State contracts require design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause. 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. Contract language containing the word "defend" in this context 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,



Carolyn Allerdice
Island Pacific Architecture, Inc.

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

We are practicing engineers and architects 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, we are 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.

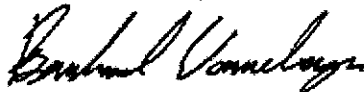
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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals 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,

WISS, JANNEY, ELSTNER ASSOCIATES, INC.



Bernhard Wonneberger, AIA, NCARB
Unit Manager & Principal



SARWAR STRUCTURAL ENGINEERING
CONSULTING SERVICES

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing structural engineering 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.

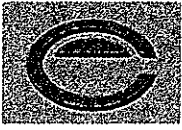
Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals to pay for damages or defense costs if they have done 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,
Sarwar Structural Engineering

A handwritten signature in black ink, appearing to read 'Afaq Sarwar', written over a diagonal line.

Afaq Sarwar, SE
Principal



ENGINEERING CONCEPTS, INC.

Consulting Engineers

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

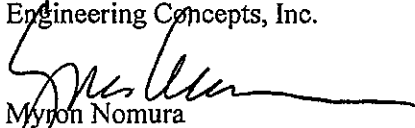
I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for 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.

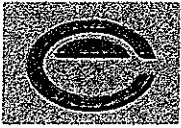
A design professional's PLI only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides 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,
Engineering Concepts, Inc.


Myron Nomura
President



ENGINEERING CONCEPTS, INC.

Consulting Engineers

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:


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,
Engineering Concepts, Inc.


Kenneth Ishizaki
Vice President

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing 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. I declined work in the past because this requirement presented an unacceptable risk, even to the detriment of our finances and workload.

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,



Scott Inatsuka, P.E.
Principal

Kennedy/Jenks Consultants
Engineers & Scientists

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

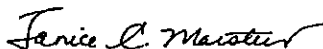
I have been a practicing engineer in the State of Hawaii for more than 20 years, and have provided design services for a number of State and County projects. I am also the current Chair of the American Council of Engineering Companies' national Risk Management Committee, and am very familiar with risk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

Many of the terms in the State's contract for design professionals are more appropriate for construction contractors. 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.

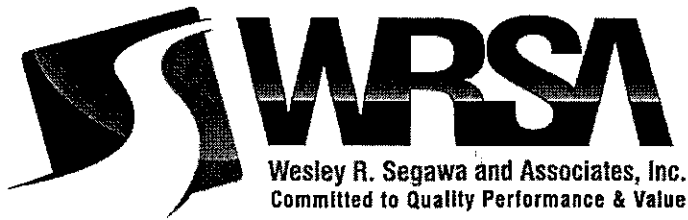
The current State contract language provides an unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement. Since the State and its citizens derive much more benefit from public works projects than design professionals, 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. 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, so that design professionals are liable only if they have been negligent.

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



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



Hilo Office
101 Silva Street, Suite 201
Hilo, Hawaii 96720

☎ 808-935-4677
☎ 888-880-6307

✉ Hilo@wrsolutions.com
🌐 www.wrsolutions.com

Honolulu ☎ 808-536-4495
736 South Street, Suite 203
Honolulu, Hawaii 96813

Kailua Kona ☎ 808-329-8249
73-5577 Kaunohala Street, #4
Kailua-Kona, Hawaii 96740

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing Civil/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 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,
Wesley R. Segawa and Associates, Inc.

Wesley R. Segawa, P.E.
President

KAUAHIKAUA & CHUN / ARCHITECTS

875 Waimanu Street Suite 609 Honolulu, Hawaii 96813

February 6, 2013

Honorable Donovan Dela Cruz, Chair
Senate Committee Economic Development, Government Operations & Housing

Honorable Rosalyn Baker, Chair
Senate Committee on Commerce & Consumer Protection

Re: **Senate Bill 504**
Relating to Procurement

Dear Chair Dela Cruz, Chair Baker and Members of the Committees,

We are a Hawaii small business selling services to public agencies and private institutions for over 30 years. In past decades the state of Hawaii did not routinely tender defense of the state to small businesses like ours. The Attorney General defended the state under the idea that the AG is better equipped to initially manage such a defense effort.

Beginning in the new century, the state administration began to require us to defend the state even if our fault was not yet determined. SB 504 corrects this situation, while not rescinding rights the state has under old design contracts now completed.

We are in **SUPPORT** of Senate Bill 504 and agree with the points made by the American Council of Engineering Companies and the American Institute of Architects AIA. Thank you for hearing this bill and considering our **SUPPORT** for SB 504.



February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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 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,

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



KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS

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

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,

KAI Hawaii, Inc.

Ken Hayashida
President

February 4, 2013
13E-039

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

**TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016**

I am a licensed engineer practicing 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 the design services. However, including the word "defend" in an indemnity clause in the design professional's contract and requiring the design professional to indemnify the State for the liability of others, creates liability that is not covered by PLI.

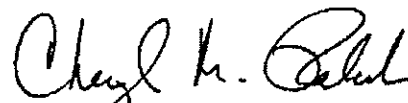
A design professional's PLI only covers harm caused by the design professional's negligence. PLI will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. The current contract language provides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

Because the State and its citizens derive much more benefit from public works projects than design professionals, requiring design professionals to defend the State in absence of negligence is unreasonable. It is unfair 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 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 this bill.

Respectfully submitted,

BELT COLLINS HAWAII LLC



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

Vice President / Director of Engineering

CMP:jdk

Belt Collins Hawaii LLC | 2153 North King Street, Suite 200 | Honolulu, HI 96819-4554 USA
Tel: 808.521.5361 | Fax: 808.538.7819 | www.beltcollins.com | honolulu@beltcollins.com

Belt Collins Hawaii is an Equal Opportunity Employer



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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:


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,
SSFM INTERNATIONAL, INC.



Eric M. Matsuda, P.E., L.S.

Vice President, Maui Operations



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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,

SSFM INTERNATIONAL, INC.

A handwritten signature in black ink, appearing to read 'Lee T. Takushi'.

Lee T. Takushi, P.E.
Vice President



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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing manager in the State of Hawaii, and have provided design project management 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,
SSFM INTERNATIONAL, INC.

A handwritten signature in black ink, appearing to read 'Stacey Miyamoto'.

Stacey Miyamoto, PMP
Principal



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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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.

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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,
SSFM INTERNATIONAL, INC.

A handwritten signature in black ink that reads 'Corey Matsuoka'.

Corey Matsuoka, P.E., PMP, LEED AP
Principal



501 Sumner Street
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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:


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,
SSFM INTERNATIONAL, INC.



Kevin Nakamoto, P.E.
Associate



February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection
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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,
Aaron

Aaron Meilleur
Vice President



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

04 February 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection
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Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
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Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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Professional liability insurance 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 it will not cover damages caused by other parties. The requirement to defend the State could create a financial obligation that far exceeds the design professional's ability to pay before a determination of fault has been made, and even if the design professional is not at fault. The requirement to be responsible for damages caused by other parties, even if the design professional is not at fault, is inherently unfair. The current contract language provides an unacceptable risk, especially considering that design professionals are personally liable for our work, and that liability follows us into retirement.

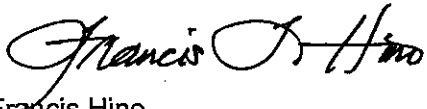
I was a co-owner of a small Hawaii engineering firm prior to joining HDR. When the State began utilizing the current contract clauses and tendered defense on design professionals, we simply stopped taking on State work.

Because the State and its citizens derive great benefit from public works projects, 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 defense costs or damages if they have done nothing wrong. Most states do not have such contract requirements, and some states that did have such requirements 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

A handwritten signature in black ink that reads "Francis Hino". The signature is written in a cursive, flowing style.

Francis Hino
Vice President



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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February 4, 2013

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Dear Chairs Dela Cruz and Baker, 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. 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 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 my view in SUPPORT of this bill.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

TERRANCE S. ARASHIRO, 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
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February 4, 2013

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Senate Committee on Economic Development,
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February 4, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

KEITH K NIYA, P.E.
Vice President



AUSTIN, TSUTSUMI & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS

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REPLY TO:
501 SUMNER STREET, SUITE 521 • HONOLULU, HAWAII 96817-5031
PHONE (808) 533-3546 • FAX (808) 526-1257
EMAIL: atdhn@olohawaii.com

OFFICES IN:
HONOLULU, HAWAII
WAILUKU, MAUI, HAWAII
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Senate Committee on Economic Development,
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February 4, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

IVAN K. NAKATSUKA, P.E.
Vice President



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February 5, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

PAUL K. ARITA, P.E.
Vice President



TERRANCE S. ARASHIRO, P.E.
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February 4, 2013

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Senate Committee on Economic Development,
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Senate Committee on Commerce and Consumer Protection

February 4, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

DEANNA HAYASHI, P.E.
Vice President



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February 5, 2013

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Senate Committee on Economic Development,
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Senate Committee on Commerce and Consumer Protection

February 5, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 
MATTHEW KIMO UNTEN, P.E.
Project Manager



Senate Committee on Economic Development,
Government Operations and Housing
Senate Committee on Commerce and Consumer Protection

February 4, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

MATT K. NAKAMOTO, P.E.
Traffic Engineer



TERRANCE S. ARASHIRO, P.E.
STANLEY T. WATANABE
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February 5, 2013

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Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 
LISA L APPELGATE, P.E.
Project 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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February 4, 2013

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AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

DONOHUE M. FUJII, P.E.
Business Development Manager



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 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, 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 some states that did have recently revised their contract language to bring fairness to the contract.



Senate Committee on Economic Development,
Government Operations and Housing
Senate Committee on Commerce and Consumer Protection

February 5, 2013

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,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By 

AMBER C. DELEON, P.E.
Project Manager

shimokawa + nakamura

February 4, 2013



Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

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Sincerely,

SHIMOKAWA NAKAMURA, INC.

A handwritten signature in black ink, appearing to read 'Jeffrey S. Nakamura', written over a horizontal line.

Jeffrey S. Nakamura, AIA
President

shimokawa + nakamura

February 4, 2013



Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the
Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection
Honorable Senators Rosalyn H. Baker, Chair; Brickwood Galuteria, Vice Chair; and Members of
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Sincerely,

SHIMOKAWA NAKAMURA, INC.

A handwritten signature in black ink that reads "Colin H. Shimokawa". The signature is written in a cursive, flowing style.

Colin H. Shimokawa, AIA
Vice President



Weston Solutions, Inc.
841 Bishop Street
Suite 2301
Honolulu, Hawaii 96813
808-275-2900 • Fax 808-585-7378

04 December 2012

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

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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,

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

Mark R. Ambler, PE, PMP

Weston Solutions, Inc.

841 Bishop St., Ste 2301
Honolulu, Hawaii 96813

(808) 275-2911 Direct
(808) 387-6167 Cell

mark.ambler@westonsolutions.com



BILLS ENGINEERING INC.
Civil/Environmental Engineering

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: TESTIMONY IN SUPPORT of SB 504, 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 this bill.

Respectfully submitted,

BILLS ENGINEERING INC.

David B. Bills, President



February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the
Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection
Honorable Senators Rosalyn H. Baker, Chair; Brickwood Galuteria, Vice Chair; and Members
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Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,

Michael J. Riehm, AIA, NCARB



SHIMABUKURO, ENDO & YOSHIZAKI, INC.

Civil, Environmental & Structural Engineers
1126 12th Avenue, Room 309
Honolulu, Hawaii 96816-3715
Ph.: (808) 737-1875 FAX: (808) 734-5516
E-mail: seyeng@seyeng.com

February 1, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,

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



1 February 2013

MEMORANDUM

TO: Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donavan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

SUBJECT: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

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

LUERSEN ARCHITECTS INC.
Architecture
Interior Architecture
Physical Planning

Suite 214
1124 Fort Street Mall
Honolulu, Hawaii 96813

Phone 808-524-1070
Fax 808-524-1000

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing architect licensed in the State of Hawaii, and have provided 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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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,
Luersen Architects Inc.


Robert A. Luersen AIA
President



Consulting
Electrical
Engineers

ECS, Inc.

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate
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Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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.

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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.

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Respectfully submitted,
ECS, Inc.

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



Design Partners Incorporated • Architects • Planners • Interiors

Vernon Inoshita AIA, LEED AP
Michael Goshi AIA
Michael Muromoto AIA
Duane Hamada AIA, LEED AP
Kendall Ellingwood III AIA, LEED AP

Renee Nishioku
Keith Sawamura AIA, LEED AP
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Johnny Wu AIA, LEED AP
Jay Ogawa
Steve Taves AIA

February 4, 2013

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TESTIMONY IN SUPPORT of SB 504
February 4, 2013
Page 2 of 2

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Respectfully submitted,

DESIGN PARTNERS INCORPORATED

Vernon Inoshita, AIA
President



Design Partners Incorporated • Architects • Planners • Interiors

Vernon Inoshita AIA, LEED AP
Michael Goshi AIA
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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the
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TESTIMONY IN SUPPORT of SB 504

February 4, 2013

Page 2 of 2

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Respectfully submitted,

DESIGN PARTNERS INCORPORATED

Michael Goshi, AIA
Vice President

SANTO ENGINEERS, LLC
CONSULTING ENGINEERS
P.O. BOX 278
KAILUA, HAWAII 96734

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donavan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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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,

SANTO ENGINEERS, LLC


Raymond M. Santo, P.E.
Manager



PO Box 25700
Honolulu, HI 96825-0700 T 808.738.7684

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection
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Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
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Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing Architect in the State of Hawaii, and have provided design services for a number of State and County projects. Working on these types of projects has helped to stabilize our business as we continue to recover from the recession and pull ourselves out of the "red". 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 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.

Our 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,

A handwritten signature in black ink, appearing to read "Colyn B. S. Lee".

Colyn B. S. Lee, AIA, CSI, CDT
Principal
HiArch, LLC



PO Box 25700
Honolulu, HI 96825-0700 T 808.738.7684

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

I am a practicing Architect in the State of Hawaii, and have provided design services for a number of State and County projects. Working on these types of projects has helped to stabilize our business as we continue to recover from the recession and pull ourselves out of the "red". 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 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.

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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,

A handwritten signature in black ink, appearing to read "Colyn B. S. Lee".

Colyn B. S. Lee, AIA, CSI, CDT
Principal
HiArch, LLC

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ARCHITECTURE

DESIGN

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INTERIOR DESIGN

QUALITY CONTROL

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

Honorable Senators Rosalyn H. Baker, Chair; Brick wood Gaultheria, Vice Chair; and
Members of the Senate Committee on Commerce and Consumer Protection

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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 such 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,

A handwritten signature in black ink, appearing to read 'AKT', with a horizontal line drawn through it.

Arthur Kimbal Thompson, AIA, TF, LEED A.P.
President, AKTA, LTD.



February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donavan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
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The current contract language provides an unacceptable risk. 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.

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 that 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 greatly 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

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

Yogi Kwong Engineers, LLC.
1357 Kapiolani Boulevard, Suite 1450
Honolulu, Hawaii 96814
Tel: 808.942.0001
Fax: 808.942.0004



MAKAI OCEAN ENGINEERING, INC.

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

Testimony To
Senate Committee on Economic Development, Government Operations and Housing
Senate Committee on Commerce and Consumer Protection

Relating To
S.B. 504
Relating to Procurement

By
Billy Pieper, Makai Ocean Engineering

Date: February 4, 2013

To: Chairs Dela Cruz and Baker, and Members of the Committees

Makai Ocean Engineering is an engineering firm in 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.

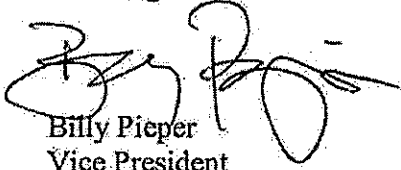
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Billy Pieper', written over a faint, larger version of the same signature.

Billy Pieper
Vice President
Makai Ocean Engineering



MAKAI OCEAN ENGINEERING, INC.

P.O. Box 1206, Kailua, Oahu, Hawaii 96734

MOE – 4224-dj
February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the
Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,
Makai Ocean Engineering, Inc.

Dale Jensen
Sr. Ocean Engineer, P.E.

February 4, 2013 Services

808 259-8871 Fax 808 259-8238 Website: MAKAI.COM Email: MAKAI@MAKAI.COM
Located at Makai Research Pier, Waimanalo, Oahu, Hawaii, USA

Helber Hastert & Fee
Planners, Inc.

February 3, 2013



Senate Committee on Economic Development, Government Operations and Housing:
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection:
Honorable Senators Rosalyn H. Baker, Chair; Brickwood Galuteria, Vice Chair; and Members of the Senate Committee on Commerce and Consumer Protection

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Baker and Dela Cruz, and Members of the Committees:

As a licensed landscape architect in the State of Hawaii, I am urging you to support SB 504.

Contractual indemnification clauses are a very real concern for my business, and we refuse to enter into contracts either public or private that have onerous requirements regarding indemnification that is not covered by our insurance policy. Requiring us to indemnify the State for the liability of others is counter to the recommendation of our attorney and our insurance company, thus we will withdraw from going after contracts with those requirements. By requiring an indemnification clause in government contracts, the cost of design becomes unnecessarily higher, and the pool of design professionals in the selection process becomes lower, all at the expense of the public good.

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 unnecessary and unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement.

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,

Helber Hastert & Fee Planners, Inc

A handwritten signature in cursive script, appearing to read "R. Quinn", written in black ink.

Richard Quinn, ASLA
Vice President, Landscape Architect
808 545-2055

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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

FUKUNAGA & ASSOCIATES, INC.



WSP Hawaii Inc
Hawaii Registered No. 84255D1

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honolulu@wspgroup.com
www.wspgroup.com.au

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

RE: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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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,
WSP Hawaii Inc.



Gene Albano
President



Kennedy/Jenks Consultants

Engineers & Scientists

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

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donavan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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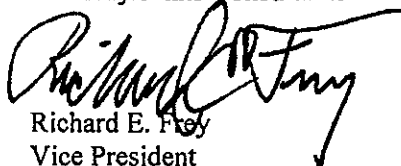
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Respectfully submitted,
Kennedy/Jenks Consultants



Richard E. Frey
Vice President

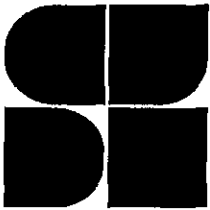
1916 Young Street, 2nd Floor

Honolulu, HI 96826

PH (808) 942-9100

FAX (808) 942-1899

E-mail: slsh1@lava.net



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

February 1, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

**Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016**

Dear Chairs Dela Cruz and Baker, and Members of the Committees:


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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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

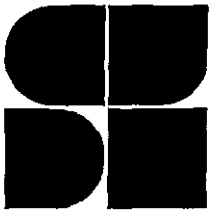
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PH (808) 942-9100

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E-mail: slsh1@lava.net



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

February 1, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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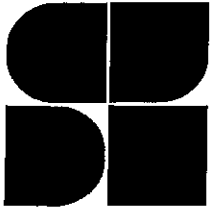
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to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

Respectfully submitted,
Shigemura, Lau, Sakanashi, Higuchi and Associates

Craig Sakanashi, P.E.
Vice-President

1916 Young Street, 2nd Floor
Honolulu, HI 96826
PH (808) 942-9100
FAX (808) 942-1899
E-mail: slsh1@lava.net



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

February 1, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

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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

Beverly Ishii-Nakayama, P.E.
Principal

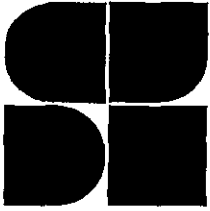
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February 1, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:


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 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,
Shigemura, Lau, Sakanashi, Higuchi and Associates


Wayne Higuchi, P.E.
Principal

miyabaraassociates llc

Landscape Architects & Planners

February 5, 2013

Hawaii State Senate
Hawaii State Capitol
Honolulu, HI 96813

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of
the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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



THERMAL ENGINEERING CORPORATION

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February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection
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Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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,
Thermal Engineering Corporation

Kevin M. Machida
President/CEO



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February 5, 2013

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Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
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Dear Chairs Dela Cruz and Baker, and Members of the Committees:

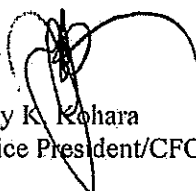
I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for 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,
Thermal Engineering Corporation



Jeffrey K. Kohara
Sr. Vice President/CFO



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February 5, 2013

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Respectfully submitted,
Thermal Engineering Corporation

Brandt T. Paras
Vice President/COO



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February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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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,
Thermal Engineering Corporation

David H. Niino
Vice President/CMO



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 5, 2013

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

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

Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Honorable Members of the Committees:

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.

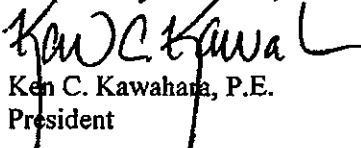
In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but 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

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Fax: 808-533-0226
www.brownandcaldwell.com

February 5, 2013

**Brown AND
Caldwell**

Senate Committee on Economic Development, Government Operations and Housing
Honorable Senators Donavan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate
Committee on Economic Development, Government Operations and Housing

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

Subject: **TESTIMONY IN SUPPORT of SB 504, Relating to Procurement**
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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

Christopher Walling, AIA, NCARB, PMP, LEED-AP
1105 8th Avenue
Honolulu, Hawai'i 96816

February 5, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

**Subject: TESTIMONY IN SUPPORT of SB 504, Relating to Procurement
Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016**

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

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 by including the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others.

How can any reasonable person, as I know you are, expect practicing professional such as myself to defend the GOVERNMENT against the actions of other third parties that we have no control over against actions in which we are NOT negligent?

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,

**Christopher
Walling**

Digitally signed by Christopher Walling
DN: cn=Christopher Walling, o=Ferraro
Choi, ou, email=christopher@ferrarochoi.
com, c=US
Date: 2013.02.05 14:45:20 -10'00'

Christopher Walling, AIA, NCARB, PMP

February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

Honorable Senators Donovan M. Dela Cruz, Chair; Sam Slom, Vice Chair; and Members of the Senate Committee on Economic Development, Government Operations and Housing

Senate Committee on Commerce and Consumer Protection

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

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

Senate Hearing: Wednesday, February 6, 2:45 p.m., Conference Room 016

Dear Chairs Dela Cruz and Baker, and Members of the Committees:

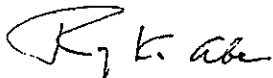
I have been a local professional civil engineer specializing in the field of sanitary engineering for the past 33 years. I have provided important and often critical wastewater design services for numerous City and County of Honolulu, County of Maui, County of Kauai, and State of Hawaii projects. I am currently a vice president with HDR Engineering, Inc. and would like to express my support for SB 504.

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 SB 504, 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