

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

LATE

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Pacific Rim Partners

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Castle & Cooke Homes Hawaii, Inc.

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

Wednesday, February 6, 2013

2:45 p.m.

State Capitol - Conference Room 016

RE: S.B. 504, RELATING TO PROCUREMENT

Chairs Dela Cruz and Baker, Vice-Chairs Slom and Galuteria, and members of the committees:

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

BIA-Hawaii **opposes** S.B. 504, as written. S.B. 504 proposes to prohibit governmental procurement contracts of any amount that are exclusively for the services of engineers, architects, surveyors, or landscape architects, from requiring the contractor to indemnify the governmental body against liability not arising from the contractor's own negligence or fault.

BIA-Hawaii supports the inclusion of contractors, as defined under Chapter 444-1, HRS, into this proposed measure. S.B. 504 relieves design professionals of the obligation to defend the State because the financial burden of paying for the defense of the State is too great. The same rationale should apply to contractors.

S.B. 504 unfairly shifts the financial burden of defending the State onto local contractors. The obligation to defend the state should either apply to all of the parties involved in a project, or none.

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

Under S.B. 504, a contractor could be responsible for paying for the State's defense even though the design professional was primarily responsible for the damage. However, the design professional would have no such obligation at all.

Bow Engineering & Development, Inc.
1953 S. Beretania Street, PH-A
Honolulu, Hawaii 96826-1342

Telephone: (808) 941-8853
Fax: (808) 945-9299
www.bowengineering.com



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.

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,
Bow Engineering & Development, Inc.

A handwritten signature in blue ink that reads "William H.Q. Bow".

William H.Q. Bow
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 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,
Collaborative Studio LLC



Cathi Ho Schar
Partner



**CONSULTING
STRUCTURAL HAWAII, INC.**

Structural Engineers

931 Hausten Street, Suite 200

Honolulu, Hawaii 96826

Phone: (808) 945-0198 • Fax: (808) 944-1177

Email: csh@consultingstructuralhawaii.com

February 4, 2013

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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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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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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 justified 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,

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



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**

DATE: Wednesday, February 6, 2013
TIME: 2:45 p.m.
PLACE: Conference Room 016

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

I am Ed Yeh, owner of ControlPoint Surveying, Inc. ControlPoint Surveying, Inc. is a professional land surveying company founded in 1984, and a member of the Hawaii Land Surveyors Association. I am in strong support of SB 504. I have provided surveying services as part of design service 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 with inclusion of the word "defend" in an indemnity clause. This requires 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 personally 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 "Ed Yeh", is written over a faint, illegible printed name.

Yue-Hong "Ed" Yeh
PRESIDENT

Tel: 808.591.2022, Ext 110

P:\Admin\House-Senate Bills\SB 504 Procurement.doc

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CONTROLPOINT
Surveying, Inc.

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 surveyor in the State of Hawaii, and have provided surveying 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,

ControlPoint Surveying, Inc.

Norman Murakami
Vice President

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Maui 1129 Lower Main Street, Suite 102
Wailuku, Hawaii 96793
Ph. (808) 242-9641 • FAX (808) 244-9220



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

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

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

We appreciate the continuing efforts of your committees and the members of the 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,
ECS, Inc.

Timothy S. Higa, P.E.
Vice President



ERNEST M. UMEMOTO AIA
Architect, Inc.

February 5, 2013

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Respectfully submitted,

Yours truly,

Ernest M. Umemoto, AIA

February 5, 2013

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Respectfully submitted,
Ferraro Choi And Associates



William D. Brooks, AIA, LEED™ AP
Principal

February 5, 2013

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Ferraro Choi And Associates



Joseph J. Ferraro, FAIA, LEED™ AP
Principal

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Respectfully submitted,
Ferraro Choi And Associates



Troy M. Miyasato, AIA
Principal



FUNG ASSOCIATES

architecture ■ planning ■ interiors

February 4, 2013

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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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Respectfully submitted,



Louis K. Fung, AIA
Principal, Fung Associates Inc.



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

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

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February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing
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Respectfully submitted,
Gray, Hong, Nojima & Associates, Inc.

Sheryl E. Nojima, PE, PhD
President



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

Daniel S.C. Hong, PE
Sheryl E. Nojima, PhD, PE
Michael H. Nojima, PE, LEED AP
Audrey Y.T. Yokota, PE
Toby T. Hanzawa, PE, LEED AP
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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,
Gray, Hong, Nojima & Associates, Inc.


Daniel S.C. Hong PE
Chairman



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

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

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

February 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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Respectfully submitted,
Gray, Hong, Nojima & Associates, Inc.

Michael H. Nojima, PE, LEED AP
Vice President



**HAWAII
ENGINEERING
GROUP, INC.**

Consulting Civil Engineers, Structural Engineers & Land Surveyors
US (SBA) SDB & DBE Certified

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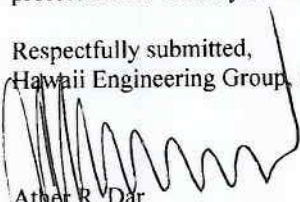
I am a practicing engineer in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for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



Athey R. Dar
President

1088 Bishop Street, Suite 2506 • Honolulu, Hawaii 96813
Tel: 808.533.2092 • Fax: 808.533.2059
Email: heg@hawaiiengineering.net • Web: www.hawaiiengineering.net

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.

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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,



Scott Inatsuka, P.E.
Principal



HARVEY K. HIDA, P.E.
ALAN T. OKAMOTO, P.E.

HIDA, OKAMOTO & ASSOCIATES, INC.
CONSULTING ENGINEERS

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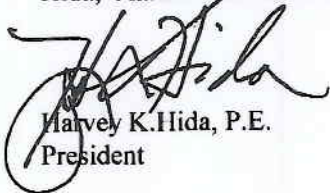
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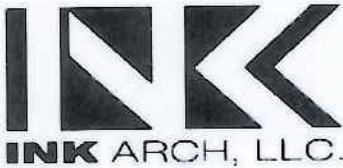
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to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

Respectfully submitted,
Hida, Okamoto & Associates, Inc.



Harvey K. Hida, P.E.
President



650 Iwilei Road, Suite 288
Honolulu, Hawaii 96817
Telephone: (808) 536-1174
Fax: (808) 536-1559
Email: ink@inkarch.com

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 for the past 40 years, 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,

A handwritten signature in black ink, appearing to read 'Maurice Kondo', is written over a light blue horizontal line.

Maurice Kondo, AIA
Managing Principal – INK ARCH. LLC

Kelso Architects, inc. 25 South Kalaheo Ave, Kailua, HI 96734
mike@kelsoarchitects.com 808-262-0006

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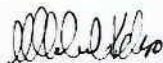
I am a practicing architect in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for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



By Its President
Michael Kelso

February 5, 2013

Hawaii State Senate
Hawaii State Capitol
Honolulu, HI 96813

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
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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, 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

MIYASHIRO AND ASSOCIATES, INC.

◆ MECHANICAL ENGINEERING CONSULTANTS ◆

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

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

We appreciate the continuing efforts of your 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,
Miyashiro and Associates, Inc.

Malcolm Miyashiro
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

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Respectfully submitted,
MK ENGINEERS, LTD.

A handwritten signature in blue ink that reads 'Aaron Hamada'. The signature is fluid and cursive, written in a professional style.

Aaron Hamada
Vice-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

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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,
MK ENGINEERS, LTD.

Paul K. Uyeda
Vice-President



February 4, 2013

Senate Committee on Economic Development, Government Operations and Housing

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Respectfully submitted,
MK ENGINEERS, LTD.

Russell K. Mori
President

MOSS Engineering, Inc.

1357 Kapiolani Blvd., Suite 830

Electrical / Lighting Engineers

Honolulu, Hawaii 96814

Richard M. Moss, P.E., LEED® AP

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

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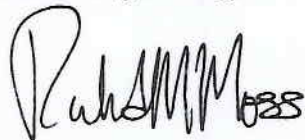
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to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

If you have any questions, please don't hesitate to call.

Very truly yours,
MOSS Engineering, Inc.



Richard M. Moss, P.E.
President

TEL: (808) 951-6632

Supporting AutoCAD and Revit Platforms
mail@moss-engineering.net

FAX: (808) 941-0917



**RICHARD MATSUNAGA & ASSOCIATES
ARCHITECTS INC.**

1150 SOUTH KING STREET, 8TH FLOOR, HONOLULU, HAWAII 96814 TEL: (808) 591-1818 FAX: (808) 591-1618
website: www.rmaia-architects.com email: info@rmaia-architects.com

February 4, 2013

GLENN M. MURATA, AIA
CARL J. NII, AIA
HERB S.F. LEONG, AIA

**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

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

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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.

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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,
Richard Matsunaga & Associates Architects Inc.

Glenn M. Murata, AIA
President



**RICHARD MATSUNAGA & ASSOCIATES
ARCHITECTS INC.**

1150 SOUTH KING STREET, 8TH FLOOR, HONOLULU, HAWAII 96814 TEL: (808) 591-1818 FAX: (808) 591-1818
website: www.rmaia-architects.com email: info@rmaia-architects.com

February 4, 2013

GLENN M. MURATA, AIA
CARL I. NII, AIA
HERB S.F. LEONG, AIA

**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
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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**

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Carl I. Nii, AIA
Senior Vice President



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February 4, 2013

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CARL L. NIL, AIA
HERB S.F. LEONG, AIA

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Senior Vice President



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February 4, 2013

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Respectfully submitted,
Richard Matsunaga & Associates Architects Inc.

Brent Tokita, AIA
Senior Associate



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Richard Matsunaga & Associates Architects Inc.

Allen Ng, AIA
Architect



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Richard Matsunaga & Associates Architects Inc.


Robert Fujita, AIA
Architect



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February 4, 2013

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Richard Matsunaga & Associates Architects Inc.


Bryan Ginoza, AIA
Senior Associate



ARCHITECTURE • PLANNING • INTERIOR DESIGN • CONSTRUCTION MANAGEMENT

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February 4, 2013

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Respectfully submitted,
Richard Matsunaga & Associates Architects Inc.


Jimmy Wu, AIA
Architect

NOLA ENGINEERING, LLC

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

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

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Respectfully submitted,

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



NEBB Certified

TAB Engineers, LLC

3032 Puiwa Lane
Honolulu, Hawaii 96817
Phone/Fax: (808) 590-2292
E-mail: ryan@tabengineers.com

February 5, 2013

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Respectfully submitted,

Ryan J.K. Chang, P.E.

TANIMURA & ASSOCIATES, INC.

Consulting Structural Engineers

925 Bethel Street Suite 309 Honolulu, Hawaii 96813
Telephone (808) 536-7692 Fax (808) 537-9022

February 4, 2013

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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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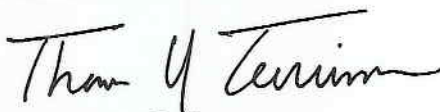
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Sincerely,
Tanimura & Associates, Inc.



Thomas Y. Tanimura
President



February 4, 2013

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

I am Ron Nishihara, AIA, a practicing architect in the State of Hawaii, and have provided construction 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 and construction management professionals. The State requires design and construction management professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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Respectfully submitted,
Trinity Management Group, LLC

A handwritten signature in blue ink, appearing to read "Ron Nishihara".

Ronald G. Nishihara, AIA, LEED AP
Principal



WCITARCHITECTURE

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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Respectfully submitted,
WCIT Architecture

Robert K. Iopa
President



Maurice H Yamasato Lloyd M Higa Jarrett A Miyaji
1100 Ward Avenue Suite 760 Honolulu HI 96814-1617
Telephone 808 631 8825

February 5, 2013

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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.

February 5, 2013

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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,
YFH ARCHITECTS, INC.

A handwritten signature in blue ink, appearing to read 'Lloyd M. Higa', is written over the typed name below.

Lloyd M. Higa
President