

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Hawaii

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Email: gwright@acechawaii.org
Website: www.acechawaii.org

February 25, 2013

Senate Committee on Judiciary and Labor

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

**Subject: TESTIMONY IN SUPPORT of SB 504 SD1, Relating to Procurement
Senate Hearing: Tuesday, February 26, 10:00 a.m., Conference Room 016**

Dear Chair Hee and Members of the Committee:

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

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

The 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.

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Page 2 of 2

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Website: www.acechawaii.org

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.

We support the revisions to the bill proposed by SB 504 SD1. The revisions resolved a concern expressed in the hearing by the State Procurement Office regarding the definition of "governmental body", and also clarifies Section 1 to clarify that the measure pertains to defense, rather than indemnification, clauses in government procurement contracts. We urge your committee to adopt the same revisions.

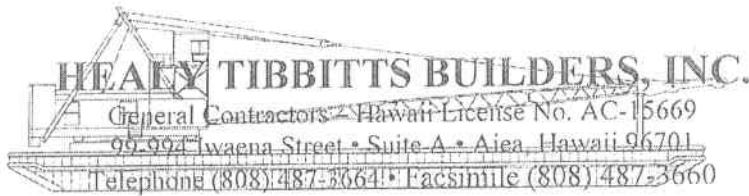
In addition, we understand from previous testimony that the General Contractors Association has proposed revised language to the bill. While SB 504 was narrowly focused to address an insurability issue that is unique to design professionals, we understand the concerns of contractors and, in an effort to reach compromise with our construction industry partners, are in support of their amendments.

We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii. 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 26, 2013

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

SUBJECT: **STRONG OPPOSITION TO S.B. 504, SD1 & INSTEAD REQUESTED AMENDMENTS, 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 26, 2013
TIME: 10:00 a.m.
PLACE: Conference Room 016

Dear Chair Hee, Vice Chair Shimabukuro and Members of the Committee,

Healy Tibbitts Builders, Inc. **strongly opposes** the passage of S.B. 504, SD1, Relating to Procurement, and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

S.B. 504, SD1 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

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

Accordingly, Healy Tibbitts Builders, Inc. **strongly opposes** S.B. 504, SD1 as currently drafted and requests that GCA's amendments be adopted.

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

Very truly yours,
Healy Tibbitts Builders, Inc.

Richard A. Heltzel
President



LATE TESTIMONY

87-2020 Farrington Highway ▪ Waianae, Hawaii 96792 ▪ Tel: 808 668-4561 ▪ FAX: 808 668-1368 ▪ Website: www.pvtland.com

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax: (808) 586-7334

February 26, 2013

SUBJECT: **STRONG OPPOSITION TO S.B. 504, SD1 & INSTEAD REQUESTED AMENDMENTS**, 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 26, 2013
TIME: 10:00 a.m.
PLACE: Conference Room 016

Dear Chair Hee, Vice Chair Shimabukuro and Members of the Committee,

PVT Land Company strongly opposes the passage of S.B. 504, SD1, Relating to Procurement, and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

S.B. 504, SD1 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

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

Accordingly, PVT Land Company strongly opposes S.B. 504, SD1 as currently drafted and requests that GCA's amendments be adopted.

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

Lindemann Construction Inc.
500 Ala Kawa St. #216-J
Honolulu, HI 96817

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

Via Fax: (808) 586-7334

February 26, 2013

SUBJECT: **STRONG OPPOSITION TO S.B. 504, SD1 & INSTEAD REQUESTED AMENDMENTS, 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 26, 2013
TIME: 10:00 a.m.
PLACE: Conference Room 016

Dear Chair Hee, Vice Chair Shimabukuro and Members of the Committee,

Lindemann Construction Inc. **strongly opposes** the passage of S.B. 504, SD1, Relating to Procurement, **and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness.** This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

S.B. 504, SD1 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

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

Accordingly, Lindemann Construction Inc. strongly opposes S.B. 504, SD1 as currently drafted and requests that GCA's amendments be adopted.

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

AMERICAN INSTITUTE OF ARCHITECTS

JDL
10:00 am

February 26, 2013

Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

Re: **Senate Bill 504 SD1**
Relating to Procurement

Dear Chair Hee and Members of the Committee,

My name is Daniel Chun, Government Affairs Chair of the American Institute of Architects (AIA) Hawaii State Council. AIA **SUPPORTS** SB 504 and our support of the SD1 language is based on:

The defense requirement is NOT INSURABLE.

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

The defense requirement survives the life of the contract

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

Passage of SB 504 will help small businesses

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

The current relief from the defense clause in contracts worth less than \$1 million does not prevent a subcontracting architect firm from having to defend the state due to "trickling down" of the defense clause. It is typical for design contracts to include the services of several design subcontractors. Thus the more than \$1 million dollar prime contracts can have several smaller subcontracts worth much less than one million dollars. Yet we still must defend.

Passage of SB 504 is in the long-term best interests of both state and consumers

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

AIA represents small architect businesses all over the state of Hawaii. Our members operate in every county seat to be close to their customers, county agencies and building projects. These businesses are also a source of professional jobs that can be too scarce in some counties. Thus passage of SB 540 will in the long-term be more helpful to the state, counties and consumers than to architects individually. Thank you for this opportunity to **SUPPORT** Senate Bill 504 Senate Draft 1.

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

LATE TESTIMONY

Via E-mail: JDLEvidence@capitol.hawaii.gov
Via Fax: (808) 586-7334

February 26, 2013

SUBJECT: **STRONG OPPOSITION TO S.B. 504, SD1 & INSTEAD REQUESTED AMENDMENTS, 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 26, 2013
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PLACE: Conference Room 016

Dear Chair Hee, Vice Chair Shimabukuro and Members of the Committee,

Royal Contracting Co., Ltd. strongly opposes the passage of S.B. 504, SD1, Relating to Procurement, and requests that the amendments proposed by the General Contractors Association of Hawaii (GCA) be adopted to ensure fairness. This bill proposes to shift the indemnification liability solely to the contractor, while exempting all engineers, architects, surveyors and landscape architects, unless the liability results from their own negligence or fault. This bill will leave the contractor alone to bear the burden of defending governmental entities when the contractor is not negligent or at fault.

S.B. 504, SD1 would unfairly allow special treatment for engineers, architects, surveyors, or landscape architects by not requiring them to sign indemnity clauses in governmental procurement contracts, whereby liability would only arise from their own fault or negligence.

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

Accordingly, Royal Contracting Co., Ltd. strongly opposes S.B. 504, SD1 as currently drafted and requests that GCA's amendments be adopted.

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

ATLAS ENGINEERING, LLC
■ Professional Civil Engineering Services ■

P.O. Box 11188 ■ Hilo, HI 96721
(808) 965-7350 ■ FAX: 965-9531

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

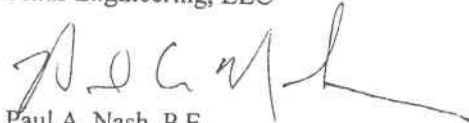
I am a practicing **licensed, professional civil engineer of more than 20 years and former County of Hawaii civil engineer** in the State of Hawaii, and have provided design services for a number of State and County projects. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am very concerned about the State's contract language for design professionals. The State requires design professionals to obtain professional liability insurance (PLI) for our work, but inclusion of the word "defend" in an indemnity clause, and requiring us to indemnify the State for the liability of others, creates liability that is not covered by our insurance.

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

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

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

Respectfully submitted,
Atlas Engineering, LLC



Paul A. Nash, P.E.
Managing Member



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

LATE TESTIMONY

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Michael H. Nojima, PE, LEED AP
Audrey Y.T. Yokota, PE
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Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

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



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

LATE TESTIMONY

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Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Michael H. Nojima, P.E.
Vice President

LATE TESTIMONY



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

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February 13, 2013

Senate Committee on Judiciary and Labor

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Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

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



February 12, 2013

Senate Committee on Judiciary and Labor

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

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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.



Russell K. Mori
President



February 12, 2013

Senate Committee on Judiciary and Labor

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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.

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

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

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

Respectfully submitted,
MK ENGINEERS, LTD.

Paul K. Uyeda
Vice President



February 12, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
MK ENGINEERS, LTD.



Aaron C. Hamada
Vice President

February 12, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,



Valerie Moss, CIC
Vice President

LATE TESTIMONY



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

February 12, 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**
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.


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

LATE TESTIMONY



February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
Bills Engineering Inc.

A handwritten signature in black ink that reads "David B. Bills".

David B. Bills
President



Consulting
Electrical
Engineers

ECS, Inc.

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

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

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

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

We appreciate the continuing efforts of your committees and the members of the 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.

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



ENGINEERING CONCEPTS, INC.
Consulting Engineers

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
Engineering Concepts, Inc.

Myron Nomura
President



ENGINEERING CONCEPTS, INC.
Consulting Engineers

LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
Engineering Concepts, Inc.

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

Kenneth Ishizaki
Executive Vice President



ENGINEERING CONCEPTS, INC.
Consulting Engineers

LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
Engineering Concepts, Inc.

Craig S. Arakaki
Vice President



MKE ASSOCIATES LLC
Structural Engineers

Aiea Commercial Center
Suite 205
99-205 Moanalua Road
Aiea, HI 96701

Phone: (808) 488-7579
Fax: (808) 488-7818
E-Mail: mke@mkellc.com

LATE TESTIMONY

February 12, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

I am a practicing 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 as design professionals are personally liable, and that this liability follows us into retirement.

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

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

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,
MKE Associates LLC

Susan Kuniyoshi, P.E.
Its Member

shimokawa + nakamura

February 13, 2013



Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

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

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 SB 504.**

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

NOLA ENGINEERING, LLC

LATE TESTIMONY

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

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

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

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

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

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

Respectfully submitted,

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

LATE TESTIMONY

WSP Hawaii Inc
Hawaii Registered No. 84255D1

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Honolulu Hawaii 96813 USA

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www.wspgroup.com

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
WSP Hawaii Inc.



Gene Albano, PE LEED®
President

LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

I 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

shimokawa + nakamura

February 13, 2013



Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

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


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 SB 504.**

Sincerely,

SHIMOKAWA NAKAMURA, INC.


Colin H. Shimokawa, AIA
Vice President



LATE TESTIMONY

THERMAL ENGINEERING CORPORATION

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

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

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

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

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

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

Respectfully submitted,
Thermal Engineering Corporation

Kevin M. Machida
President/CEO



LATE TESTIMONY

THERMAL ENGINEERING CORPORATION

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

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:


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

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

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

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

Respectfully submitted,
Thermal Engineering Corporation


Jeffrey K. Kohara
Sr. Vice President/CFO



THERMAL ENGINEERING CORPORATION

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

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

I am a practicing 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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Respectfully submitted,
Thermal Engineering Corporation

Brandt T. Paras
Vice President/COO



LATE TESTIMONY

THERMAL ENGINEERING CORPORATION

512 Kalihi Street • Honolulu, Hawaii 96819

Tel: (808) 848-6966 • Fax: (808) 848-6964

engineering@thermaleng.com

February 13, 2013

Senate Committee on Judiciary and Labor

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Respectfully submitted,
Thermal Engineering Corporation

David H. Niino
Vice President/CMO

LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Respectfully submitted,
Ferraro Choi And Associates



Joseph J. Ferraro, FAIA, LEED™ AP
Principal

LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

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Respectfully submitted,
Ferraro Choi And Associates



Troy M. Miyasato, AIA
Principal

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

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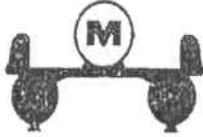
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We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to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

Respectfully submitted,
Ferraro Choi And Associates


William D. Brooks, AIA, LEED™ AP
Principal



MAKAI OCEAN ENGINEERING, INC.

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

Testimony To
Senate Committee on Judiciary and Labor

Relating To
S.B. 504
Relating to Procurement

By
Billy Pieper, Makai Ocean Engineering

Date: February 4, 2013

To: Honorable Senators Clayton Hee, Chair; Maile Shimabukuro, Vice Chari; and
Members of the Committee

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.

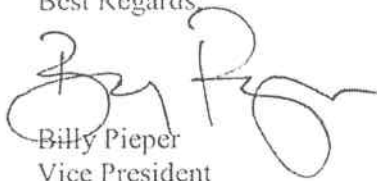
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Since the State and its citizens derive much more benefit from public works projects than design professionals, requiring design firms to defend the State in absence of negligence is unreasonable. It is simply not fair to require design professionals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

Best Regards

A handwritten signature in black ink, appearing to read "Billy Pieper". The signature is fluid and cursive, with the first name "Billy" and last name "Pieper" clearly distinguishable.

Billy Pieper
Vice President
Makai Ocean Engineering

February 12, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

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

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

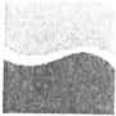
We appreciate the continuing efforts of your committees and the members of the Senate to improve the business climate in Hawaii, and respectfully urge you restore fairness to State contracts with design professionals. Thank you for an opportunity to express our views in SUPPORT of this bill.

Respectfully submitted,



John J. Ida
President
Urban Works, Inc.

LATE TESTIMONY



KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS

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

February 13, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committees:

I am a practicing 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,
KAI Hawaii, Inc.



Ken Hayashida
President

February 13, 2013

Hawaii State Senate
Hawaii State Capitol
Honolulu, HI 96813

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee, and Members of the Committee:

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

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

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

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

Sincerely,



MIYABARA ASSOCIATES LLC
Michael T. Miyabara, FASLA

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



February 11, 2013

Senate Committee on Judiciary and Labor

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

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

Dear Chair Hee and Members of the Committee:

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

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

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

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

Respectfully submitted,

Brown and Caldwell

A handwritten signature in black ink, appearing to read "Douglas B. Lee". The signature is fluid and cursive, written over a light blue horizontal line.

Douglas B. Lee, P.E.
Vice President



Pacific Geotechnical Engineers, Inc.
Soils & Foundation Engineering Consultants

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

February 11, 2013

Senate Committee on Judiciary and Labor

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

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Respectfully submitted,

PACIFIC GEOTECHNICAL ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'Glen Y.F. Lau', written in a cursive style.

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



LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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Respectfully submitted,
YOGI KWONG ENGINEERS, LLC.

Jeffrey K. Kalani, P.E.
Associate

TANIMURA & ASSOCIATES, INC.

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

LATE TESTIMONY

February 11, 2013

Senate Committee on Judiciary and Labor

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Sincerely,
Tanimura & Associates, Inc.



Thomas Y. Tanimura
President



**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

LATE TESTIMONY

February 13, 2013

Senate Committee on Judiciary and Labor

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

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Respectfully submitted,

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