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[www.ssfm.com](http://www.ssfm.com)

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, SSFM International, Inc., is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

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

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



THE LIMTIACO CONSULTING GROUP  
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

April 2, 2014

**House Committee on Judiciary**

Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Committee Members

**Subject: TESTIMONY IN SUPPORT of SB2463 SD2, HD1 Relating to Procurement**  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Committee Members:

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

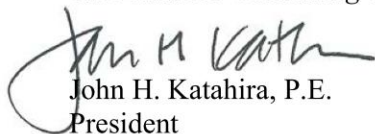
TLCG faces numerous business challenges, being a small business in Hawaii. One such challenge is being addressed in SB2463 SD2, HD1 Relating to Procurement. We are in full support of this bill.

As licensed professional engineers, we understand our duty to be responsible for our error; however, the current State contract language requires us to pay for defense costs even if we are not negligent. This defend clause is also uninsurable for design professionals, meaning defense costs would need to be paid out of pocket and engineers could be held personally liable even if our engineering services had nothing to do with the claim. (Professional liability insurance only pays for E&O and/or negligence.) This duty to defend jeopardizes our company, our employees, and our families.

Our company is so bothered with this contract provision that we declined a significant project with the Department of Transportation after being selected as the most qualified design professional. This project would have fueled growth of our company and we were prepared to hire engineers to reverse Hawaii's proverbial "brain drain." This did not happen because of the onerous defend clause.

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

With aloha,  
*The Limtiaco Consulting Group, Inc.*

  
John H. Katahira, P.E.  
President

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Fukunaga & Associates, Inc. is a locally owned and managed small business civil and environmental engineering firm operating in Hawaii since 1969. We are in **strong SUPPORT of SB2463**, Relating to Procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **SUPPORT** of SB2463.

Very truly yours,

Fukunaga & Associates, Inc.



Jon K. Nishimura, P.E.  
President

FUKUNAGA & ASSOCIATES, INC.





**PALMS HAWAII**  
ARCHITECTURE  
2970 Kele Street #115 Lihue HI 96766  
(808) 246-4796 www.palmshawaii.com

Wednesday, April 02, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**

Relating to Procurement

**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

**Our company, Palms Hawaii Architecture LLC, is in strong support of SB2463, relating to procurement.**

This bill will help to correct a troubling condition in government entity contract terms for design professionals (architects and engineers). The contract terms as written are appropriate for construction contractors. However, for design professionals, the contract terms create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Architectural firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent architectural services to government entities, but we struggle with making the decision to conduct government work under these terms, and we can not accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still burden us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

Palmer W. Hafdahl, AIA



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Suite 620  
Honolulu, Hawaii 96817  
Phone: (808) 531-1308  
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April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendy McLain', written in a cursive style.

Wendy McLain, P.E., LEED AP  
Associate



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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As president of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. This is a standard across the Nation. As the State contract language currently stands, we can be contractually required to provide defense costs even if we are not at fault, nor ever found to be at fault. In our experience, the cost of even our own defense projected through a potential trial phase is often the cause for unreasonable settlements. We would not be able to survive, should we have to cover other parties as well, especially if these other parties are not willing to settle since the defense costs are on us, and the decision to settle is no longer ours.

Engineering firms typically earn only 5-6% of the construction cost of a project with a 10% profit of that earning. Although the current statute provides relief for design fees under \$1 million, this amount is quickly surpassed when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project; thus making us all liable for defense of the government entity. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our compensation, is simply unreasonable. To further exacerbate the situation, design professionals may be held personally liable, which can follow us beyond our work life and into retirement.

We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Terrance Arashiro, P.E.  
President



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

April 2, 2014

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Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As a project engineer of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Adam Luke  
Project Engineer



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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As a vice president of Austin, Tsutsumi & Associates, Inc., a local design engineering firm representing 60 employees, I am in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express my view in **support** of SB2463.

Respectfully submitted,

Ivan K. Nakatsuka, P.E.  
Vice President





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

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As a junior civil engineer of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Claire Fukuoka  
Engineer-In-Training



TERRANCE S. ARASHIRO, P.E.  
STANLEY T. WATANABE  
IVAN K. NAKATSUKA, P.E.  
ADRIENNE W. L. H. WONG, P.E., LEED AP  
DEANNA HAYASHI, P.E.  
PAUL K. ARITA, P.E.  
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April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

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Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As Vice President of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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Respectfully submitted,

Erik S. Kaneshiro, L.P.L.S.

Vice President, Director of Surveying



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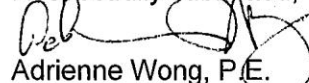
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Respectfully submitted,



Adrienne Wong, P.E.  
Vice President



TERRANCE S. ARASHIRO, P.E.  
STANLEY T. WATANABE  
IVAN K. NAKATSUKA, P.E.  
ADRIENNE W. L. H. WONG, P.E., LEED AP  
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PAUL K. ARITA, P.E.  
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April 2, 2014

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Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As an associate at Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. This is a standard across the Nation. As the State contract language currently stands, we can be contractually required to provide defense costs even if we are not at fault, nor ever found to be at fault. In our experience, the cost of even our own defense projected through a potential trial phase is often the cause for unreasonable settlements. We would not be able to survive, should we have to cover other parties as well, especially if these other parties are not willing to settle since the defense costs are on us, and the decision to settle is no longer ours.

Engineering firms typically earn only 5-6% of the construction cost of a project with a 10% profit of that earning. Although the current statute provides relief for design fees under \$1 million, this amount is quickly surpassed when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project; thus making us all liable for defense of the government entity. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our compensation, is simply unreasonable. To further exacerbate the situation, design professionals may be held personally liable, which can follow us beyond our work life and into retirement.

We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Karen C. Sakai, P.E.  
Traffic Engineer



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

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As a project manager of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

  
Garrett Tokuoka, P.E.  
Project Manager



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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As an employee of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Jessica Agsalda  
Civil Engineer



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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As a project engineer of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Eric Takamine, P.E.  
Project Engineer



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

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As an employee of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

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Respectfully submitted,

Kendra Hanagami, P.E. (CA)  
Civil Engineer





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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

As a Project Designer of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. This is a standard across the Nation. As the State contract language currently stands, we can be contractually required to provide defense costs even if we are not at fault, nor ever found to be at fault. In our experience, the cost of even our own defense projected through a potential trial phase is often the cause for unreasonable settlements. We would not be able to survive, should we have to cover other parties as well, especially if these other parties are not willing to settle since the defense costs are on us, and the decision to settle is no longer ours.

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We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

Keith Hasegawa  
Project Designer

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

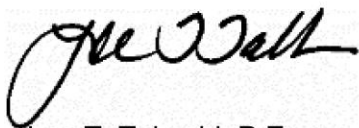
Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, SSFM International, Inc. is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. The current contract language provides an unfair and unacceptable risk, especially considering that we design professionals are personally liable, and that this liability follows us into retirement. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our compensation, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,



Lee T. Takushi, P.E.

Vice President



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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject:** **TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

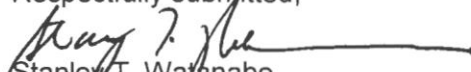
As Vice President of Austin, Tsutsumi & Associates, a local design engineering firm representing 60 employees, we are in **strong support** of SB2463, relating to procurement. This bill will help to correct a grievous condition in government contract terms for design professionals (i.e., Engineers and Architects). The contract terms create a liability that is not covered by our professional liability insurance thereby jeopardizing not only legal protection for the government entity, but the entire solvency of small businesses like ours.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. This is a standard across the Nation. As the State contract language currently stands, we can be contractually required to provide defense costs even if we are not at fault, nor ever found to be at fault. In our experience, the cost of even our own defense projected through a potential trial phase is often the cause for unreasonable settlements. We would not be able to survive, should we have to cover other parties as well, especially if these other parties are not willing to settle since the defense costs are on us, and the decision to settle is no longer ours.

Engineering firms typically earn only 5-6% of the construction cost of a project with a 10% profit of that earning. Although the current statute provides relief for design fees under \$1 million, this amount is quickly surpassed when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project; thus making us all liable for defense of the government entity. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our compensation, is simply unreasonable. To further exacerbate the situation, design professionals may be held personally liable, which can follow us beyond our work life and into retirement.

We are a regular provider of engineering design services to government agencies. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill will benefit the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **support** of SB2463.

Respectfully submitted,

  
Stanley T. Watanabe  
Vice President



April 3, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less  
than \$10,000,000 between any governmental body and a licensed design  
professional of a requirement that the contractor defend the governmental  
body from claims arising out of the contractor's performance under the  
contract unless the contractor is at fault. Effective December 21, 2112.  
(SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

**TOMCO CORP. has grave concerns regarding** S.B. 2463, SD2, HD1, Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

**Accordingly, TOMCO CORP. has grave concerns regarding S.B. 2463, SD2, HD1.**

**500 Ala Kawa St., Suite #100A Honolulu, Hawaii 96817  
Telephone #: (808) 845-0755 Fax #: (808) 845-1021  
Lic# ABC 16941**



# THERMAL ENGINEERING CORPORATION

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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

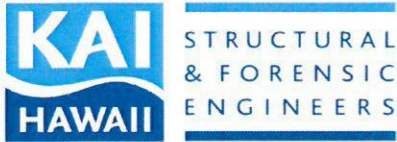
Thermal Engineering Corporation is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

Jeffrey K. Kohara  
Sr. Vice President/CFO  
Thermal Engineering Corporation



Ken Hayashida, P.E. | *President*  
Michael Hunnemann, P.E. | *Vice President*

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject:** TESTIMONY IN SUPPORT of SB 2463, SD2, HD1  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, KAI Hawaii, Inc. is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ken Hayashida', written over a white background.

Ken Hayashida, P.E.

President

KAI Hawaii, Inc.



**CONSULTING  
STRUCTURAL HAWAII, INC.**

Structural Engineers

931 Hausten Street, Suite 200

Honolulu, Hawaii 96826

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

Email: csh@cshengineers.com

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair;  
Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, Consulting Structural Hawaii Inc., is in strong support of SB2463, relating to procurement. This bill will help to correct a condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, they create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence. It will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would agree to the existing contract terms. 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. Engineering firms typically earn 5% to 6% of the construction cost of a project, with minimal profit. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our fee, is unreasonable.

Although the current statute provides relief for projects under \$1 million, the present contract terms discourage small firms from pursuing larger projects, either alone or in a joint venture with other firms. We respectfully urge you to pass this bill.

Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

---

Ethan W. Okuna  
President,  
Consulting Structural Hawaii, Inc.

---

Gary S. Suzuki  
Principal  
Consulting Structural Hawaii, Inc.

April 2, 2014

House Committee on Judiciary  
Honorable Representatives Karl Rhoads,  
Chair; Sharon Har,  
Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

**Ferraro Choi And Associates, Ltd. is in strong support of SB2463, relating to procurement.**

This bill will help to correct a grievous condition in government entity contract terms for design professionals (architects and engineers). The contract terms as written are appropriate for construction contractors. However, for design professionals, the contract terms create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Architectural firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent architectural services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,



Joseph Ferraro FAIA, LEED AP  
Principal





A Minority Woman Owned & Operated Small Business



500 ALAKAWA STREET, BLDG 119 • HONOLULU, HAWAII 96817 • PH: (808) 842-7955 • FAX: (808) 842-3985 • LIC #BC-14014

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)

Via Fax: (808) 586-8504

April 4, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE CHAIR  
AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less than  
\$10,000,000 between any governmental body and a licensed design professional of a  
requirement that the contractor defend the governmental body from claims arising out of  
the contractor's performance under the contract unless the contractor is at fault.  
Effective December 21, 2112. (SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

***Waltz Engineering, Inc. is a locally owned and operated small business, of nearly 30 years in business in Hawaii.***

***Waltz Engineering, Inc. has grave concerns regarding S.B. 2463, SD2, HD1, Relating to Procurement*** because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

***Accordingly, Waltz Engineering, Inc. has grave concerns regarding S.B. 2463, SD2, HD1.***

737 Bishop Street, Suite 3000  
Honolulu, Hawaii 96813  
Tel: 808-523-8499  
Fax: 808-533-0226  
www.browncaldwell.com

April 3, 2014



**House Committee on Judiciary: Honorable Representatives Karl Rhoads, Chair;  
Sharon Har, Vice Chair; and Members of the Committee**

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1  
Relating to Procurement  
Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Brown and Caldwell is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors, but for design professionals, it creates a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. The current contract language provides unacceptable risks for our firm, especially considering that we design professionals are personally liable, and that this liability follows us into retirement. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts is far out of proportion to our reward, and is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we pursue larger projects, or when we are a subconsultant on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,  
Brown and Caldwell

A handwritten signature in black ink, appearing to read 'Douglas B. Lee'.

Douglas B. Lee, P.E.  
Vice President



general contractor license #ABC 21576

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)

Via Fax: (808) 586-8504

April 3, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO PROCUREMENT.** Prohibits the inclusion in any public works contract less than \$10,000,000 between any governmental body and a licensed design professional of a requirement that the contractor defend the governmental body from claims arising out of the contractor's performance under the contract unless the contractor is at fault. Effective December 21, 2112. (SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

LYZ, In. is a general contractor doing business in the State of Hawaii.

**LYZ, Inc. has grave concerns regarding** S.B. 2463, SD2, HD1, Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

Accordingly, LYZ, Inc. **has grave concerns** regarding S.B. 2463, SD2, HD1.

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

James N. Kurita  
Vice President/ Chief Operating Officer

# AMERICAN INSTITUTE OF ARCHITECTS

JUD  
2:00 pm

April 4, 2014

Honorable Karl Rhoads, Chair  
House Committee on Judiciary

Re: **Senate Bill 2463 SD2 HD1**  
**Relating to Procurement**

Dear Chair Rhoads and Members of the Committee,

My name is Daniel Chun, Government Affairs Chair of the American Institute of Architects (AIA) Hawaii State Council., in **SUPPORT** of SB 2463 SD2 HD1.

## **The “defense clause “ survives the life of the contract.**

The “defense clause” may be acceptable as a contract condition on other state procurements where a product, such as soap or toilet paper, is bought and consumed relatively quickly. For public works projects, such as highways and buildings, service life is measured in decades. Public works also have high public usage, thus having long-term benefit to the taxpayers while having long-term personal risk to architects and other design professionals.

We recently see trends where lawsuits are brought, sometimes before construction begins and during the design process, relating to environmental issues. We are willing to defend ourselves, but we lack the resources to defend public agencies against these broad-based claims.

## **Passage of SB 2463 SD2 will help small businesses and all consumers**

AIA members operate some 180 Hawaii businesses, all of which are small businesses because no one business dominates the market for design services. Our members operate small businesses in every county, whether large or small in population. AIA supports our local businesses so that they can offer consumer service and choice everywhere in the state.

In the past, AIA lobbied the legislature for relief and bills have been passed, but with a limited contract dollar amount. This bill increases the contract dollar amount. Thank you for this opportunity to **SUPPORT** Senate Bill 2463 SD2 HD1.

# BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

## TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

Friday, April 4, 2014

2:00 p.m.

HAWAII STATE CAPITOL - ROOM 325

### SUBJECT: S.B. 2463 S.D. 2, H.D. 1 - RELATING TO PROCUREMENT

#### 2014 Officers

##### President

**Brian K. Adachi**  
BKA Builders, Inc.

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**Richard Hobson, Jr.**  
Gentry Homes, Ltd.

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**Craig Washofsky**  
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First Hawaiian Bank

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**Evan Fujimoto**  
Graham Builders, Inc.

##### Special Appointee-Builder

**Paul D. Silen**  
Hawaiian Dredging Construction Co., Inc.

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**Mark Kennedy**  
HASEKO Construction Management  
Group, Inc.

##### Special Appointee-Associate

**Dean Uchida**  
SSFM International, Inc.

##### Immediate Past President

**Greg Thielen**  
Complete Construction Services Corp.

##### Chief Executive Officer

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BIA-Hawaii

#### 2014 Directors

##### Anthony Borge

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##### Carleton Ching

Castle & Cooke Hawaii, Inc.

##### Chris Cheung

CC Engineering & Construction, Inc.

##### Clifton Crawford

C&J Contracting, Inc.

##### Eric Bass

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##### Gary T. Okimoto

Honolulu Wood Treating

##### Lili Shintani

Alan Shintani, Inc.

##### Mark Hertel

Inter-Island Solar Supply, Oahu-Maui-  
Hawaii-Kauai

##### Marshall Hickox

Homeworks Construction, Inc.

##### Michael Watanabe

JW, Inc.

##### Ryan Engle

Bays Lung Rose & Holma

##### Stephen Hanson

simplicityHR by ALTRES

Dear Chair Rhoads, Vice-Chair Har, and members of the Committee:

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

BIA-Hawaii **cannot support, and has grave concerns** regarding, S.B. 2463 S.D. 2, H.D. 1, which prohibits the inclusion in any public works contract less than \$10,000,000 between any governmental body and a licensed design professional of a requirement that the contractor defend the governmental body from claims arising out of the contractor's performance under the contract unless the contractor is at fault.

The costs involved in defending the state prior to a contractor's fault being determined can be costly. While both design professionals and construction contractors had diligently worked on compromise language, the current proposed language would provide complete relief to the design professionals while leaving the construction contractor to carry the entire burden to defend the State. Raising the duty to defend threshold for design professionals from the current \$1M to \$10M assures this.

Making the construction contractor solely responsible for defending the State would result in increased insurance costs for all parties and may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on State public works projects.

Proponents argue that they are unable to obtain such defense insurance because it is not available. However, some insurance companies have indicated that such coverage is available to design professionals, albeit may not be readily available on the marketplace.

Based on the foregoing reasons, the BIA-Hawaii **cannot support** S.B. 2463 S.D. 2, H.D. 1.



## **TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY**

**Friday, April 4, 2014**

**2:00 p.m.**

**HAWAII STATE CAPITOL - ROOM 325**

**SUBJECT: S.B. 2463 S.D. 2, H.D. 1 - RELATING TO PROCUREMENT**

Dear Chair Rhoads, Vice-Chair Har, and members of the Committee:

My name is Brian Adachi, President BKA Builders Inc., and 2014 President of 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, and affiliated with the National Association of Home Builders. BKA Builders Inc. is a local Commercial General Contractor doing business in the State of Hawaii since 1990.

As President of BKA Builders Inc. and 2014 President of the BIA-Hawaii, **I cannot support, and have grave concerns** regarding, S.B. 2463 S.D. 2, H.D. 1, which prohibits the inclusion in any public works contract less than \$10,000,000 between any governmental body and a licensed design professional of a requirement that the contractor defend the governmental body from claims arising out of the contractor's performance under the contract unless the contractor is at fault.

The costs involved in defending the state prior to a contractor's fault being determined can be costly. While both design professionals and construction contractors had diligently worked on compromise language, the current proposed language would provide complete relief to the design professionals while leaving the construction contractor to carry the entire burden to defend the State.

Raising the duty to defend threshold for design professionals from the current \$1M to \$10M assures this.

Making the construction contractor solely responsible for defending the State would result in increased insurance costs for all parties and may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on State public works projects.

Proponents argue that they are unable to obtain such defense insurance because it is not available. However, some insurance companies have indicated that such coverage is available to design professionals, albeit may not be readily available on the marketplace.

Based on the foregoing reasons, I **cannot support** S.B. 2463 S.D. 2, H.D. 1.



April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**

Relating to Procurement

**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

MK Engineers, Ltd. is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would.

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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

As a small business, we are not able to absorb the risk that comes with agreeing to uninsurable contracts and every time we are faced with this decision, we must consider the possibility that one lawsuit could shut down our business permanently. With our employee's livelihood at risk, this decision is not made lightly.

The Catch 22 is that if we turn down the work due to this unreasonable risk, our business suffers and we are not able to hire more people. However, if we take on the work, we could potentially lose the business, EVEN IF THE CLAIM IN THE LAWSUIT IS NOT OUR FAULT. Just by being part of a team exposes us to the entire team's liability.

We have been involved in lawsuits where the claim has nothing to do with our work as electrical engineers. However, just by the fact that we are a part of the team, we are

**TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**

April 3, 2014

Page 2

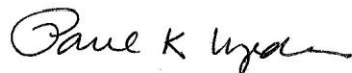
named to the suit. To make matters worse, the plaintiff's attorney would not drop us from the case unless we paid them tens of thousands of dollars even when it was agreed that MK Engineers had no liability. In this case, the rest of the team was still in business and involved in the lawsuit; however, if MK Engineers was the last firm in business, we would be obligated to pay for the entire defense.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other firms to pursue larger projects, or when we are a sub-consultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii.

This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

MK ENGINEERS, LTD.

A handwritten signature in cursive script that reads "Paul K. Uyeda".

Paul K. Uyeda, P.E.  
Vice President





AMERICAN SOCIETY OF CIVIL ENGINEERS

Hawai'i Section | PO Box 917 | Honolulu, HI 96808-0917

**2014 Hawai'i Section Officers**

**PRESIDENT**

**Brian Enomoto, P.E.**

Moffatt & Nichol  
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Honolulu, HI 96813  
(808) 388-5559  
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**PRESIDENT-ELECT**

**Glenn Miyasato, P.E.**

MKE Associates, LLC  
99 205 Mbanalua Road, Suite 205  
Aiea, Hawaii 96701  
(808) 488-7579  
e-mail: [glenn@mkeinc.com](mailto:glenn@mkeinc.com)

**VICE PRESIDENT**

**Benjamin J. Rasa, P.E.**

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email: [ben@tapestrypartners.net](mailto:ben@tapestrypartners.net)

**SECRETARY**

**Tim Goshi, P.E.**

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e-mail: [tim.goshi@gmail.com](mailto:tim.goshi@gmail.com)

**TREASURER**

**Lara Karamatsu, P.E.**

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e-mail: [laramatsu@pbworld.com](mailto:laramatsu@pbworld.com)

**IMMEDIATE PAST-PRESIDENT**

**Ian Arakaki, P.E.**

The Limtiaco Consulting Group  
680 Iwilei Road, Suite 430  
Honolulu, Hawaii 96817  
(808) 596-7790, Fax: (808) 596-7361  
e-mail: [ian@tlc.hawaii.com](mailto:ian@tlc.hawaii.com)

**YOUNGER MEMBER FORUM PRESIDENT**

**Jason Sugibayashi, P.E.**

Sam O Hirota, Inc.  
864 South Beretania Street  
Honolulu, Hawaii 96813  
(808) 537-5971  
e-mail: [jsugibayashi@ascehawaiiymf.org](mailto:jsugibayashi@ascehawaiiymf.org)

April 3, 2014

Honorable Karl Rhoads, Chair  
Honorable Sharon E. Har, Vice Chair  
Honorable Members of the House Committee on Judiciary:

I am testifying in support for Senate Bill 2463, SD2, HD1 Relating to Procurement on behalf of the Hawaii Section of the American Society of Civil Engineers.

The American Society of Civil Engineers was established in 1852 and is the oldest professional engineering organization in the United States. The Hawaii Section of ASCE was established in 1937 and is comprised of more than 1,000 civil engineers from both the public and private sectors of our state. Many of our members own or are employed by companies in both the design and construction industry.

Members with professional licensure authority regularly seal construction drawings for state agencies certifying that the plans were prepared under their direction. A substantial part of their work involves projects for state and county facilities. Design and construction contracts with the state require the designer or the contractor to defend the government against any and all suits for injury that may occur throughout the life of the project. The potential liability for these plans may be substantial and engineers can be held personally liable for their actions well beyond the period of their involvement with the project.

We concur with the position taken by the American Council of Engineering Companies of Hawaii relating to the limited coverage provided by professional liability insurance which does not defend the state as demanded in their design contracts nor for damages caused by others.

We recommend your passage of Senate Bill 2463, SD2, HD1. Thank you for your consideration.

Sincerely yours,

Owen Miyamoto, PE, FASCE  
Local Legislative Affairs Liaison  
3209 Paty Drive  
Honolulu, HI 96822-1439  
Email: [owen@hawaii.edu](mailto:owen@hawaii.edu)



Civil Engineers – Designers and Builders of the Quality of Life

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY  
FRIDAY APRIL 4, 2014 @ 2:00 PM  
HAWAII STATE CAPITOL – ROOM 325  
SUBJECT: S.B. 2463 S.D. 2, H.D. 1 – RELATING TO PROCUREMENT

Dear Chair Rhoads, Vice-Chair Har, and members of the Committee:

My name is Evan Fujimoto, President of Graham Builders, a design+build general contractor specializing in custom residential construction in Honolulu. I also serve as the 2014 Secretary for the Building Industry Association of Hawaii.

While our company does not pursue State public works projects, we **strongly oppose** the current language of the bill as it puts contractors at an unfair disadvantage to defend the State prior to any negligence being established, while providing complete relief to the design professionals involved. Also, the increase in the threshold for contracts valued less than \$1 million under current law to less than \$10 million as proposed will result in increased insurance premiums for all parties to the contract and may result in some contractors not being able to obtain liability insurance coverage and thus not be able to bid on State public works projects.

While we understand the difficulty design professionals may face obtaining insurance coverage to defend the State, that issue should be addressed with the insurance industry to see how the State's defense requirements adversely affect surety companies' ability to provide coverage for design professionals.

Construction contractors have worked diligently with design professionals on this bill but, unfortunately, we are unable to support the current language.

Thank you,  
Evan K. Fujimoto  
Graham Builders, Inc.

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcawhawaii.org](mailto:info@gcawhawaii.org)  
Website: [www.gcawhawaii.org](http://www.gcawhawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 4, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less than  
\$10,000,000 between any governmental body and a licensed design professional  
of a requirement that the contractor defend the governmental body from claims  
arising out of the contractor's performance under the contract unless the contractor  
is at fault. Effective December 21, 2112. (SB2463 HD1)

### HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads and Vice Chair Har and Members of the Committee,

The General Contractors Association of Hawaii (GCA), which represents over six hundred construction industry members remains very concerned with the current version of S.B. 2463 and **has grave concerns** regarding the H.D. 1 version of the bill and requests that the bill be deferred to allow stakeholders time to come up with language that would provide relief to both the design professionals and construction contractors.

While GCA understands the design professionals situation, there is concern that uneven application of defense obligations will negatively impact our industry as a whole, increase costs and premium rates for the construction contractor, which will in turn increase costs of public works projects. GCA **has grave concerns regarding the current version of S.B. 2463, SD2, HD1** because as currently written it would only provide the design professionals (architects and engineers) with no requirement to defend the state prior to negligence being established, leaving the construction contractor to defend the state in its entirety at the beginning of any lawsuit filed. While the bill would require the design professional to pay defense costs at the end of the lawsuit if they are found negligent it would still require the construction contractor to provide all defense costs to itself and the state up front, through its insurance coverage.

GCA cannot support the current H.D.1 version of SB 2463 because it proposes to increase the current \$1M threshold to \$10M, meaning that for any design professional with a contract under \$10M, there will be no duty to defend. The problem with such language is that it would provide

complete relief to the design professional and increase the burden on the construction contractor; since there may be very few, if any, contracts that exceed \$10M.

Enactment of this bill, as proposed, would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for all parties, not only on public works projects but private projects as well. Further it could increase costs to taxpayers and may result in some contractors no longer being able to obtain liability insurance coverage. This will likely result in less competition among state public works contracts. An example of the inequity of this situation is that a design professional would only be required to defend and pay for its own negligence or omissions, while the construction contractor, who may be entirely faultless, or not even named as a party in the suit would be required to defend the state up front and potentially suffer increased premiums that may not have been factored into a current or future project.

Thank you for this opportunity to share our concerns about this measure.



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

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair;  
Sharon Har, Vice Chair; and Members of the Committee

Subject: **TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company MKE Associates LLC is in strong support of SB2463 relating to procurement. We are a consulting structural engineering firm and this bill will help to correct a grievous condition in government entity contract terms for design professionals such as us. The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully Submitted,  
MKE Associates LLC

Susan Kuniyoshi, P.E.  
Its Member

# AMERICAN INSTITUTE OF ARCHITECTS

JUD  
2:00 pm

April 4, 2014

Honorable Karl Rhoads, Chair  
House Committee on Judiciary

Re: **Senate Bill 2463 SD2 HD1**  
**Relating to Procurement**

Dear Chair Rhoads and Members of the Committee,

My name is Daniel Chun, Government Affairs Chair of the American Institute of Architects (AIA) Hawaii State Council., in **SUPPORT** of SB 2463 SD2 HD1.

## **The “defense clause “ survives the life of the contract.**

The “defense clause” may be acceptable as a contract condition on other state procurements where a product, such as soap or toilet paper, is bought and consumed relatively quickly. For public works projects, such as highways and buildings, service life is measured in decades. Public works also have high public usage, thus having long-term benefit to the taxpayers while having long-term personal risk to architects and other design professionals.

We recently see trends where lawsuits are brought, sometimes before construction begins and during the design process, relating to environmental issues. We are willing to defend ourselves, but we lack the resources to defend public agencies against these broad-based claims.

## **Passage of SB 2463 SD2 will help small businesses and all consumers**

AIA members operate some 180 Hawaii businesses, all of which are small businesses because no one business dominates the market for design services. Our members operate small businesses in every county, whether large or small in population. AIA supports our local businesses so that they can offer consumer service and choice everywhere in the state.

In the past, AIA lobbied the legislature for relief and bills have been passed, but with a limited contract dollar amount. This bill increases the contract dollar amount. Thank you for this opportunity to **SUPPORT** Senate Bill 2463 SD2 HD1.

**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



April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, Bow Engineering & Development, Inc., is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "William H.Q. Bow".

William H.Q. Bow, P.E.  
President

**Kennedy/Jenks Consultants**  
**Engineers & Scientists**

AIPA Building  
3375 Koapaka Street, Suite F227  
Honolulu, Hawaii 96819  
808-218-6030  
FAX: 808-488-3776

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, Kennedy/Jenks Consultants is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,



Kyle Okino, Resource Manager, Hawaii Water Infrastructure Group





**Alan Shintani Inc.**

GENERAL CONTRACTOR BC 13068

**Testimony to the House Committee on Judiciary**

**Friday, April 4, 2014**

**2:00 PM**

**Hawaii State Capitol – Room 325**

**SUBJECT: GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO PROCUREMENT**

Dear Chair Rhoads, Vice-Chair Har and Members of the Committee:

**Alan Shintani, Inc. cannot support and has grave concerns** regarding S.B. 2463, SD2, HD1, Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

The costs involved in defending the state prior to a contractor's fault being determined can be costly. While both design professionals and construction contractors had diligently worked on compromise language, the current proposed language would provide complete relief to the design professionals while leaving the construction contractor to carry the entire burden to defend the State. Raising the duty to defend threshold for design professionals from the current \$1M to \$10M assures this.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

Proponents argue that they are unable to obtain such defense insurance because it is not available. However, some insurance companies have indicated that such coverage is available to design professionals, albeit may not be readily available on the marketplace.

Thank you for the opportunity to express my grave concerns and regret to say that **Alan Shintani, Inc. cannot support S.B. 2463, SD2, HD1.**

Alan Shintani  
President



**S & M SAKAMOTO, INC.**  
GENERAL CONTRACTORS

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)  
Via Fax: (808) 586-8504

April 4, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE CHAIR  
AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less than  
\$10,000,000 between any governmental body and a licensed design professional of a  
requirement that the contractor defend the governmental body from claims arising out of  
the contractor's performance under the contract unless the contractor is at fault. Effective  
December 21, 2112. (SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

S & M Sakamoto, Inc. has grave concerns regarding S.B. 2463, SD2, HD1, Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B. 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

Accordingly, S & M Sakamoto, Inc. has grave concerns regarding S.B. 2463, SD2, HD1.

Very truly yours,

Gerard Sakamoto  
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*  
*Gavin Y. Masaki, PE, LEED AP*  
*Winston M. Taniguchi, PE*

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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, Gray Hong Nojima & Associates, Inc., is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

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

Sheryl E. Nojima, PhD, PE  
President

SN:dkh

April 3, 2014

**House Committee on Judiciary and Labor:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

I have been a local professional civil engineer specializing in the field of sanitary engineering for the past 33 years. I have provided important and often critical wastewater design services for numerous City and County of Honolulu, County of Maui, County of Kauai, and State of Hawaii projects. I am currently a vice president with HDR Engineering, Inc. and would like to express my support for SB 2463, relating to procurement.

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.

I sincerely appreciate the continuing efforts of your committees and the members of the legislature to improve the business climate in Hawaii, and respectfully urge you support SB 2463. 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

**SB2463**

Submitted on: 4/3/2014

Testimony for JUD on Apr 4, 2014 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hugh Y Ono	Individual	Support	No

Comments: Please support this Bill, which fundamentally provides a level of fairness and equity for professional engineers and architects.

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

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



**WATG**

strategy  
planning  
architecture  
landscape  
interiors

April 2, 2014

Re: Testimony in support of SB 2463, SD2, HD1  
Relating to Procurement

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, WATG is in strong support of SB2463, relating to procurement.

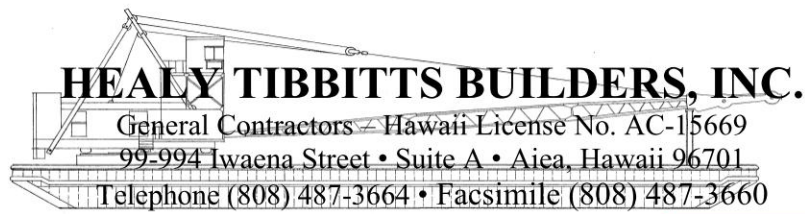
This bill will help to correct a grievous condition in government entity contract terms for design professionals (architects and engineers). The contract terms as written are appropriate for construction contractors. However, for design professionals, the contract terms create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Architectural firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent architectural services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other firms to pursue projects, or when we are a sub consultant to a firm on a project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,

Richard M. Myers, AIA  
Associate Vice President



**LATE**

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)

April 4, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less than  
\$10,000,000 between any governmental body and a licensed design professional  
of a requirement that the contractor defend the governmental body from claims  
arising out of the contractor's performance under the contract unless the contractor  
is at fault. Effective December 21, 2112. (SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's.

Healy Tibbitts Builders, Inc. **has grave concerns regarding** S.B. 2463, SD2, HD1, Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

**Accordingly, Healy Tibbitts Builders, Inc. has grave concerns regarding S.B. 2463, SD2, HD1.**

Sincerely,

**Rick  
Heltzel**

Richard A. Heltzel  
President

Digitally signed by Rick Heltzel  
DN: cn=Rick Heltzel, o=Healy  
Tibbitts Builders, Inc., ou,  
email=raheltzel@healytibbitts.co  
m, c=US  
Date: 2014.04.03 16:36:29 -10'00'





1099 ALAKEA STREET, SUITE 1560  
HONOLULU, HI 96813

TELEPHONE: (808) 541-9101

FAX: (808) 541-9108

**LATE**

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)

Via Fax: (808) 586-8504

April 4, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less than  
\$10,000,000 between any governmental body and a licensed design professional  
of a requirement that the contractor defend the governmental body from claims  
arising out of the contractor's performance under the contract unless the  
contractor is at fault. Effective December 21, 2112. (SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

**Nordic PCL Construction, Inc. has grave concerns regarding S.B. 2463, SD2, HD1,**  
Relating to Procurement because it will overly burden the construction contractor with defense  
costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to  
shift the duty to defend the state solely to the construction contractor, while exempting such  
duties for projects under \$10 million for engineers, architects, surveyors and landscape  
architects. This bill will leave the construction contractor alone to bear the burden of defending  
governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by  
contract to defend the state prior to negligence being established. The result would be  
increased insurance costs for the contractor and ultimately the tax payer because such costs  
would be passed on to all public works projects. Furthermore, such an amendment may result in  
some contractors no longer being able to obtain liability insurance coverage and thus unable to  
bid on state public works projects, further reducing competitive procurement.

Yours truly,

NORDIC PCL CONSTRUCTION, INC.

A handwritten signature in blue ink, appearing to read "Glen Kaneshige".

Glen Kaneshige  
President

# JHC JOHN H. CONNORS INSURANCE



2 Waterfront Tower # 303

500 Ala Moana Blvd.

tel: 808-534-7319 fax: 808-203-2044 cell: 808-927-6774

Email to: tsofos@connorshawaii.com

To: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

From: Tom Sofos, Bond Manager

Date: April 3, 2014

Re: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO PROCUREMENT.** Prohibits the inclusion in any public works contract less than \$10,000,000 between any governmental body and a licensed design professional of a requirement that the contractor defend the governmental body from claims arising out of the contractor's performance under the contract unless the contractor is at fault. Effective December 21, 2112. (SB2463 HD1)

**Dear Chair Rhoads, Vice Chair Har and Members of the Committee: My name is Tom Sofos and I am the construction surety manager and work with contractors at John H. Connors Insurance.**

**I have grave concerns regarding S.B. 2463, SD2, HD1,** Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, and subcontractors, and suppliers, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor and related parties, alone to bear the burden of defending governmental entities prior to negligence or fault being established. Contractors should be responsible for their inferior work but, not as a result of a poor design by the architect/engineer and approved

S.B 2463, SD2, HD1 would leave construction contractors, and related parties, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractors and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

In addition, no one in any other profession. has a waiver of liability ie ; Doctors, Lawyers Insurance agents, Dentist, Hospitals, Certified Public Accountants (CPA;s) , Nurses, Teachers, etc , etc.. anyone who holds themselves out as " professionals " will start requesting a waiver of liability.

Once you start waiving the responsibilities and liability of one group, then I think you start on a slippery slope, where all other groups will want you to waive their liabilities and responsibilities this is a cause of grave concern\ as it allows and encourages these groups to provide and inferior work product with no responsibility or liability.

In addition, the architects/engineers, main concern is the lack of available insurance to add the State of Hawaii on their policies as additional insured. However, we are told by our wholesale brokers (people who sell insurance to us ) that this insurance is available should they want to apply for it.

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

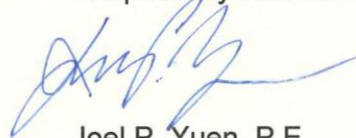
Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, InSynergy Engineering, Inc., is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,



Joel P. Yuen, P.E.

President



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



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

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

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

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company, Shigemura, Lau, Sakanashi, Higuchi and Associates, is in strong support of SB2463, relating to procurement. This bill will help to correct a grievous condition in government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company provides excellent engineering services to government entities, but we struggle with making the decision to conduct government work under these terms, and we won't accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms still haunt us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in **SUPPORT** of SB2463.

Respectfully submitted,

Beverly Ishii-Nakayama, PE  
Principal



April 2, 2014

[www.pbworld.com](http://www.pbworld.com)

**House Committee on Judiciary:**

Honorable Representatives Karl Rhoads, Chair;  
Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Parsons Brinckerhoff is in strong support of SB2463, relating to procurement. This bill will help to correct government entity contract terms for design professionals (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not pay for the agency or other indemnitee's attorneys' fees, until our negligence is determined by the court. By requiring an up-front 'defense', we are subject to advancing these attorney's fees ourselves, with no reimbursement from an insurance company. This can have the effect of increasing prices for engineering and architecture services, which increases the cost of projects for taxpayers. Also, in our extremely competitive market, we most often do not have the option of increasing our price to provide a contingency for attorney's fees, if we are to win new work. If a claim for defense comes up, we will most likely lose money on a project. This particularly hurts our subconsultants, some of whom are small or disadvantaged business, whom we are most often required to flow-down the defense and indemnity clauses in our subconsultant agreements with them.

This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,  
PARSONS BRINCKERHOFF, INC.



Randall Urasaki, P.E.  
Vice President

# MIYASHIRO AND ASSOCIATES, INC.

MECHANICAL ENGINEERING CONSULTANTS

---

**LATE**

April 2, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

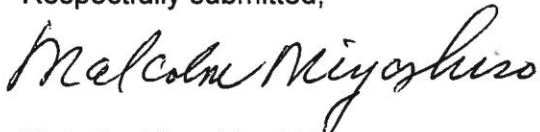
Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Our company Miyashiro and Associates, Inc., is in strong support of SB2463, relating to procurement. This bill will help to correct an unfair condition in government entity contract terms for design professionals such as us (engineers and architects). The contract terms as written are appropriate for construction contractors but, for design professionals, create a situation that is not covered by our professional liability insurance.

A design professional's professional liability insurance only covers harm caused by the design professional's negligence; it will not advance the cost of defending other parties before the negligence of the design professional is established, and will not cover damages caused by other parties. If we could get insurance to cover the State's defense costs, we would. 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. Engineering firms typically earn only 5-6% of the construction cost of a project, with profits often on the order of a few thousand dollars. Requiring us to be subject to such high risk from uninsurable contracts, far out of proportion to our reward, is simply unreasonable.

Our company has been providing excellent engineering services to private industry and government entities for over twenty years, but we struggle with making the decision to conduct government work under these terms, and would not accept these contract terms for high-risk projects. Although the current statute provides relief for projects under \$1 million, the terms are still of major concern to us when we join together with other small firms to pursue larger projects, or when we are a subconsultant to a larger firm on a large project. The current situation undermines qualification-based selection in state procurement, stifles innovation, and is hurting small business engineering firms in Hawaii. This bill benefits the State and its citizens by encouraging greater participation by qualified firms such as ours. We respectfully urge you restore fairness to government contracts and to pass this bill. Thank you for an opportunity to express our views in SUPPORT of SB2463.

Respectfully submitted,



Malcolm Miyashiro, P.E.  
President

# KING & NEEL, INC.

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



**LATE**

April 3, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less  
than \$10,000,000 between any governmental body and a licensed design  
professional of a requirement that the contractor defend the governmental  
body from claims arising out of the contractor's performance under the  
contract unless the contractor is at fault. Effective December 21, 2112.  
(SB2463 HD1)

## HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

**King & Neel, Inc., founded in 1967, is a Hawaii based insurance and bonding  
agency dedicated to serving Hawaii's building industry.**

**King & Neel, Inc. has grave concerns** regarding S.B. 2463, SD2, HD1, Relating to  
Procurement because it will overly burden the construction contractor with costs on  
public works projects, and is ultimately extremely inequitable. This bill proposes to shift  
the duty to defend the state solely to the construction contractor, leaving them to bear  
the burden of defending governmental entities prior to negligence or fault being  
established. The result would be increased insurance costs for the construction  
contractor, and ultimately the taxpayer. Furthermore, such a law may result in  
contractors experiencing great difficulty in obtaining liability insurance coverage, thus  
reducing competitive procurement. Finally, while architects and engineers have  
indicated that naming governmental agencies as an additional insured on design  
professional liability insurance policies providing coverage for defense costs is  
unavailable, we have been told otherwise by wholesale insurance brokers.

Sincerely,

**John N. Bustard**  
Executive Vice President





FINANCE INSURANCE, LTD.

*Quality Service For Your Insurance Needs*

**LATE TESTIMONY**

February 24, 2014

To Whom it May Concern

Subject: **SB 2463 and HB 2047**

As the insurance agent for many of the architectural and engineering firms doing business in Hawaii, I would like to clarify coverage under the Professional Liability policy.

Coverage for the defense of parties other than the insured is not covered under the professional liability policy. This is the same for all professional policies including those for attorneys, doctors, accountants, etc. It is not available in the insurance marketplace.

I would also like to clarify that if the insured party is determined to be negligent, then losses, costs and expenses, which could include the cost of the other party's defense is covered. It's the "upfront" cost, before negligence is determined, that is an "out-of-pocket" expense for the insured. Any contractual agreement not tied to the insured's negligence is considered uninsurable.

Please feel free to contact me at 808-522-2095 if you have any questions.

Sincerely,

Karen Hong  
Agent  
Architects and Engineers Program



**Business Insurance  
Services, Inc.**

**LATE TESTIMONY**

February 24, 2014

Beverly Ishii-Nakayama  
Shigemura, Lau, Sakanashi, Higuchi and Associates  
1916 Young Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96826

RE: Professional Liability Insurance in Hawaii

Dear Beverly:

We understand that an issue regarding Professional Liability Insurance (PLI) coverage has arisen related to bills in the 2014 Hawaii State Legislature (SB2463 and HB2047) advocated by a number of design professional organizations in Hawaii, including the American Council of Engineering Companies of Hawaii, the American Institute of Architects Hawaii State Council, the Hawaii Chapter of the American Society of Civil Engineers, and the Coalition of Hawaii Engineering and Architectural Professionals. The question raised is whether PLI covers certain terms in an indemnification clause.

The purpose of this letter is to clarify the coverage under PLI. Specifically:

The insurance requirements of some clients reflect a misunderstanding of the nature and scope of PLI coverage for architects, engineers, surveyors, and other design professionals. When Clients attempt to mandate specific insurance coverage, they usually do so to seek financial protection and to structure insurance requirements in what you consider to be standard terms. In some cases, it is impossible for design professionals to comply with such requirements. As such, it is a good idea to become educated about the nuances of PLI coverage. This is especially important when the requirements, as stated, are actually adverse to your interests or are simply impossible to meet under the terms of the design professional's PLI coverage.

**Oahu Office**  
615 Piikoi Street, Suite 1901  
Honolulu, HI 96814  
Ph: (808) 592-5011  
Fax: (808) 628-6912

**Kauai Office**  
4485 Pohe'e Street, Suite 140  
Lihue, Hawaii 96766  
Ph: (808) 245-2773  
Fax: (808) 855-2159

**Maui Office**  
140 N. Market Street, Suite 102  
Wailuku, HI 96793  
Ph: (808) 244-6006  
Fax: (808) 856-7554

**Hilo Office**  
1080 Kilouea Avenue  
Hilo, HI 96720  
Ph: (808) 935-1888  
Fax: (808) 443-2462

### **Naming the Client as an Additional Insured**

Clients may think that they will be better protected against third-party claims by being included as a named insured or an additional insured on the PLI policy.

This may be true for some forms of insurance, but it is not an option in the PLI policies. The reason is that since Clients do not perform professional services, they do not assume the risks that the PLI policy is designed to cover.

Unlike other types of insurance policies, the PLI policy does not make payments to the insured. Instead, the PLI policy pays "*on behalf of*" the insured in the event that the insured's negligence in rendering professional services causes damage or injury. If you were named as an insured under the PLI policy, you would be unable to collect damages since an insured cannot make a claim against itself and recover under the PL policy.

Professional liability claims are complex, and often involve multiple parties and an absence of clear responsibility. This complexity is one factor that distinguishes PLI policies from other policies such as the commercial general liability (CGL) policy, which does allow additional insureds.

Some clients believe that additional insured status will provide adequate coverage for their in-house design professionals. Clients would be better served by purchasing their own PLI policy to cover the activities of in-house design professionals. By doing so, they can better manage risks by obtaining coverage and policy limits that meet their specific needs.

### **Contractual Liability Coverage**

Some clients may ask design professionals to have their PLI policy endorsed to specifically insure contractual liability—that is, the risks the design professional assumes under the professional services agreement. Clients often ask for contractual liability coverage from design professionals because such coverage is found under a contractor's CGL policy. Such a request is problematic, however, because CGL contractual liability is *broad form* coverage due to the contractor's broad risk exposure. Conversely, the PLI policy has a *limited form* contractual liability because the design professional's risk exposure is limited to professional negligence.

The PLI policy automatically includes limited *form* contractual liability coverage to the extent that the liability is predicated on the insured's negligence in the rendering of professional services. If your request for contractual liability coverage is consistent with the coverage already provided by the policy, a special endorsement is unnecessary.

On the other hand, if the coverage requested goes beyond what the policy already covers, you have put the design firm in the position of assuming a business risk that is uninsurable. Examples of uninsurable contractual liabilities include express warranties and guarantees, representations that services will be free from fault and defect, and representations that the project, when finished, will be fit for its intended purpose. It is to your benefit to have contractual obligations that are insurable so that there's an increased chance of availability of a remedy to address any claim caused by the design professional's negligence.

Professional liability coverage is designed to pay on behalf of an insured firm that does not meet the standard of care in fulfilling professional obligations; it is not designed to stand behind *all* contractual obligations.

By law, design professionals are liable for their own negligence as well as for the negligence of those they have assumed vicarious liability (generally, professional consultants). If design professionals agree by contract to accept liability for more than this negligence, they are assuming a business risk that is not covered under PLI policy.

Sincerely,



Wesley K. Imamura, CPCU, AAI  
Principal

February 24, 2014



**LOCKTON**  
**LATE TESTIMONY**

Dear Sir or Madam:

I am writing in connection with two bills being considered by the Hawaii State Legislature: SB2463 and HB2047. These bills are being advocated by several design professional organizations in Hawaii, including the American Council of Engineering Companies of Hawaii, the American Institute of Architects Hawaii State Council, the Hawaii Chapter of the American Society of Civil Engineers, and the Coalition of Hawaii Engineering and Architectural Professionals.

Specifically, I understand that there is confusion regarding whether design professionals' professional liability insurance provides coverage for (i) non-negligent acts, and (ii) defense of the design professional's client. I would like to help clarify these issues, and I can speak to them with some authority, as I have over twenty years' experience working with design professionals as an attorney in private practice, a claim supervisor for a major insurer of design professionals, and as a broker specializing in insurance coverage and risk management for design professionals.

A design professional who indemnifies the client for damages caused by its negligent acts, errors, and omissions can be reasonably sure that its promise will have coverage under its professional liability insurance policy. But an indemnity for non-negligent performance likely will fall outside of the coverage grant of the professional liability insurance policy. The reason for this is that professional liability policies exclude coverage for "liability assumed by contract" unless the design professional would have been liable in the absence of contract. The law makes the design professional responsible for its negligence, whether or not the contract says so – and so a design firm's indemnity for damages caused by its own negligence is covered. But indemnifying the client for non-negligent acts, or for damages caused by other parties, is an obligation assumed by contract for which the design firm would not otherwise be liable, and thus triggers this exclusion.

Regarding defense expenses, professional liability policies will pay to defend the policyholder, but not the client or other parties not insured on the policy. This is a stark difference from commercial general liability policies and other coverages with which clients are familiar; those policies will allow the client to be named as an additional insured and thus entitled to a defense under certain conditions. This is not done on professional liability policies. If the policyholder is adjudged negligent, and the client's defense costs are part of the legal damages owed by the policyholder, the policy will in all likelihood cover those costs. But the policy will not pay to defend the client until and unless (i) the policyholder is found to be negligent and (ii) the client's defense costs constitute legal damages owed by the policyholder on account of that negligence.

In the world of insurance, it is dangerous to say "never," and there almost certainly are some carriers who might offer broader coverage, perhaps to a very large firm with a very good claims history. But the




**LATE TESTIMONY**

overwhelming majority of design professionals cannot procure such coverage. For these design professionals, an indemnity clause that requires them to “defend” their client or to indemnify for non-negligent performance lacks insurance coverage and may well be a “bet the firm” proposition for that design professional. This uninsured – and, for all but a few, uninsurable – promise puts client and design professional both at risk.

I would be pleased to discuss this further, at your request.

Yours truly,



Karen Erger

Vice President and Director of Practice Risk Management

[kerger@lockton.com](mailto:kerger@lockton.com)

319-389-0312

LOCKTON COMPANIES, LLC

444 W 47th St, Ste 900 / Kansas City, MO 64112-1906

816-960-9000 / FAX: 816-960-9099

[www.lockton.com](http://www.lockton.com)

February 24, 2014

Ms. Janice Marsters  
Kennedy/Jenks Consultants  
3375 Koapaka St., Suite F227  
Honolulu, HI 96819

Dear Janice:

A Professional Liability policy purchased by a design professional is a legally binding contract between the insured and the insurance company. The nature of the policy is to cover a negligent act, error or omission committed by the design professional in performing the professional's services. Insurers have a duty to defend their insured, the design professional for wrongful acts committed by the designer. Professional liability insurance policies do not extend coverage or defense to additional insureds.

Many contracts will include an Indemnification clause requiring that the design professional defend the Client. This can pose a problem to the design professional as it is in opposition of what the policy provisions will provide. If the design professional accepts the Indemnification clause and agrees to defend the Client, the design professional is opening themselves up to personal loss because they are agreeing to something that the insurance policy will not provide.

Please feel free to contact me should you have any questions.

Very truly yours,



Valerie Moss, CIC  
Vice President

Mr. Kevin Wooley  
Marsh US Consumer  
Seabury & Smith Inc.  
701 Market St. Ste 1100  
St. Louis, MO 63101

**LATE TESTIMONY**

24 February 2014

**Re: Professional liability insurance coverage of Hawaii indemnity**

**Beazley Group**

1270 Avenue of the Americas  
Suite 1200  
New York, NY 10020  
USA

Phone (646) 943 5900  
Fax (646) 378 4039

info@beazley.com  
www.beazley.com

Dear Mr. Wooley:

We understand that an issue regarding professional liability insurance coverage has arisen related to bills in the 2014 Hawaii State Legislature (SB2463 and HB2047) advocated by a number of design professional organizations in Hawaii, including the American Council of Engineering Companies of Hawaii, the American Institute of Architects Hawaii State Council, the Hawaii Chapter of the American Society of Civil Engineers, and the Coalition of Hawaii Engineering and Architectural Professionals.

You asked us to provide input regarding professional liability insurance coverage of contractual indemnity provisions.

Professional liability insurance covers the design professional only for claims arising out of its negligence. An acceptably worded indemnity provision is one that limits the design professional's indemnity obligation to the extent the damages are caused by the design professional's negligent performance of services under the agreement. If the indemnity provision is not appropriately negligence-based, the design professional may be exposed to liability beyond that for which it is insured.

We recommend deleting any language in an indemnity provision requiring the design professional to defend the client. The word "defend" raises significant insurability issues, regardless of the insurance company involved. The duty to defend is problematic because it is broader than the duty to indemnify. Accordingly, when a design professional has a duty to defend, the design professional may be required to defend a claim based upon a mere allegation of negligence, unlike a duty to indemnify which is triggered by actual negligence. The duty to defend a client may be interpreted as a contractual obligation rather than an

beazley

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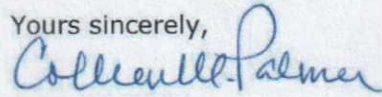
99



obligation triggered by adjudication of your negligence. As a contractual obligation, the duty to defend would not be covered by your professional liability insurance policy.

Please let me know if you have any questions.

Yours sincerely,



Colleen M. Palmer

Direct tel: (617) 239 2606

email: [colleen.palmer@beazley.com](mailto:colleen.palmer@beazley.com)



April 4, 2014

**LATE**

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)  
Via Fax: (808) 586-8504

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **OPPOSITION TO S.B. 2463, SD2, HD1 RELATING TO PROCUREMENT.**

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Henry's Equipment Rental and Sales, Inc. is a small general contractor specializing in civil and site work with the bulk of our work done for Hawaii State and County agencies.

**We have grave concerns regarding S.B. 2463, SD2, HD1, Relating to Procurement** because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the State solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement. As a contractor who has successfully bid with the State and County agencies for over 20 years, this will negatively impact our company so much so that the increased cost of insurance and the possible legal and labor costs involved with claim defense would make continuing to remain solvent questionable.

**All entities should be responsible to provide coverage for their own duty to defend and should not be left solely for the contractor to be burdened with.**

Sincerely,

Frances Kama-Silva  
Henry's Equipment Rental and Sales, Inc.

# WARRIOR

CONTRACTING, LLC

**LATE**

Via E-mail: [JUDTestimony@capitol.hawaii.gov](mailto:JUDTestimony@capitol.hawaii.gov)

Via Fax: (808) 586-8504

April 4, 2014

TO: HONORABLE KARL RHOADS, CHAIR, HONORABLE SHARON HAR, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON JUDICIARY

SUBJECT: **GRAVE CONCERNS REGARDING S.B. 2463, SD2, HD1 RELATING TO  
PROCUREMENT.** Prohibits the inclusion in any public works contract less than  
\$10,000,000 between any governmental body and a licensed design professional  
of a requirement that the contractor defend the governmental body from claims  
arising out of the contractor's performance under the contract unless the  
contractor is at fault. Effective December 21, 2112. (SB2463 HD1)

HEARING

DATE: Friday, April 4, 2014  
TIME: 2:00 p.m.  
PLACE: Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

Warrior Contracting, Inc. **has grave concerns regarding** S.B. 2463, SD2, HD1, Relating to Procurement because it will overly burden the construction contractor with defense costs, increase costs of public works projects and is ultimately inequitable. This bill proposes to shift the duty to defend the state solely to the construction contractor, while exempting such duties for projects under \$10 million for engineers, architects, surveyors and landscape architects. This bill will leave the construction contractor alone to bear the burden of defending governmental entities prior to negligence or fault being established.

S.B 2463, SD2, HD1 would leave construction contractors, as the only party still required by contract to defend the state prior to negligence being established. The result would be increased insurance costs for the contractor and ultimately the tax payer because such costs would be passed on to all public works projects. Furthermore, such an amendment may result in some contractors no longer being able to obtain liability insurance coverage and thus unable to bid on state public works projects, further reducing competitive procurement.

**Accordingly, Warrior Contracting, Inc. has grave concerns regarding S.B. 2463, SD2, HD1.**

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

Las Vegas  
3443 Neeham Suite 8  
North Las Vegas, NV 89030  
P: (702) 283-1859  
F: (702) 220-7067  
NV #0074622, #0075632

Honolulu  
735 Bishop St. #401  
Honolulu, HI 96813  
P: (808) 260-1117  
F: (808) 260-1118  
HI ABC #33154



ARCHITECTURE  
URBAN PLANNING  
INTERIORS

831 Pohukaina Street, Suite E1  
Honolulu, Hawaii 96813-5328

Telephone: (808) 597-1155  
Fax: (808) 591-1221  
Email: uwmail@uwarchitects.com



April 3, 2014

**House Committee on Judiciary**

Honorable Representatives Karl Rhoads, Chair;  
Sharon Har, Vice Chair;  
Members of the Committee

Subject: **TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
**Relating to Procurement Hearing**  
April 4, 2014; 2:00 p.m.; Conference Room 325

Dear Chair Rhoads, Vice Chair Har and Member of the Committee:

I am a practicing architect and design professional in the State of Hawaii, and our firm has provided quality design services on State and County projects since its establishment in 1984. In light of recent court decisions across the country bringing attention to contractual indemnification clauses, I am concerned about the State of Hawaii's contract language for design professionals that include troublesome indemnification and defense language. The State requires architects and engineers to obtain professional liability insurance, and in its contracts uses the term "shall defend" in its indemnity clause, requiring the design professional to indemnify the State for the liability of other parties. This legal requirement is not covered by our professional liability insurance.

A design professional's professional liability insurance will only cover harm to a client caused by the design professional's negligence, and will not advance the cost of defending other parties before the negligence of the design professional has been established. It will not cover damages caused by other parties. The current contract language provides an unacceptable risk for architects and engineers, in light of the fees derived versus the high risk involved in undertaking projects. The inclusion of indemnification clauses requiring architects and engineers to defend the State for damages resulting from the actions of others is burdensome and unfair, and will discourage qualified architects and engineers from seeking work from the State, resulting in a reduced talent pool, diminished innovation and creative solutions.

We appreciate the continuing efforts of your committee and the members of the House to improve the business climate in Hawaii. We 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,  
URBAN WORKS, INC.

Lorrin Matsunaga, AIA, LEED-AP  
Principal



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Hawaii

**President**

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

**President-Elect**

William H.Q. Bow, P.E.  
Bow Engineering  
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Sachin Shah, P.E.  
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Ginny M. Wright  
Executive Director  
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Fx: (808) 234-1721  
Email: [gwright@acechawaii.org](mailto:gwright@acechawaii.org)  
Website: [www.acechawaii.org](http://www.acechawaii.org)

April 3, 2014

**House Committee on Judiciary:** Honorable Representatives Karl Rhoads, Chair; Sharon Har, Vice Chair; and Members of the Committee

**Subject: TESTIMONY IN SUPPORT of SB 2463, SD2, HD1**  
Relating to Procurement  
**Hearing: Friday, April 4, 2:00 p.m., Conference Room 325**

Dear Chair Rhoads, Vice Chair Har and Members of the Committee:

The American Council of Engineering Companies of Hawaii (ACECH) represents about 70 member firms with over 1,300 employees throughout Hawaii. Projects designed by ACECH's member firms 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.

Design professionals conducting work for government entities do so under contract terms and conditions requiring the entity to defend the state in any lawsuit related to the project, regardless of whether the designer has any fault related to the project. The contract terms as written create a situation that is not covered by our professional liability insurance. This requirement to defend the state before negligence or fault is shown is an inappropriate attempt to shift the government's liability to Hawaii's hardworking businesses. We note that the contract still contains an indemnification clause that requires contracting entities to pay damages, including attorney's fees, if found to be at fault.

The Federal Government and many states do not require contracting entities to sign indemnification clauses, and, of the States that do, a number have recently revised their contract language to remove the "defend" term and to link liability to negligence or fault. These States have recognized that the State and its citizens derive much more benefit from public works projects than designers and contractors. In many cases, the owner's lack of maintenance or subsequent upgrades affect the project's risk profile far more than does the initial design. Requiring companies to defend the State in absence of fault is not fair.

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:

- 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".