



GOV. MSG. NO. 850

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 1316 HD2 SD1 CD1

On July 15, 2009, House Bill No. 1316, entitled "A Bill for an Act Relating to Torts" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to provide a limitation on the liability for design professionals engaged in work on highway projects where a design professional is determined to be a joint tortfeasor along with one or more other joint tortfeasors, the degree of negligence is ten percent or less, and the contract value was \$1,000,000 or less.

This bill raises concerns because it gives a negligent design professional more protection from liability than the law affords the developer, the State of Hawaii, the counties, or the construction entities, who rely on the expertise of the design professional when building the highway.

This bill amends by law previous contracts between design professionals and the developers, the State of Hawaii, the counties, or the construction entities. I am concerned that this allows the professional to avoid contractual duties and obligations they fairly and voluntarily entered into.

The State recognizes that some design professionals elect not to bid on State highway projects as a result of the liability exposure that might accrue as a result of working on these projects. We believe the more appropriate approach would be to enact meaningful tort reform in Hawaii that would cover most professions and also put reasonable limits on the financial exposure of the State and the counties.

The Honorable Colleen Hanabusa, President
and Members of the Senate
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For the foregoing reasons, I allowed House Bill No. 1316 to become law as Act 179,
effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a large, stylized loop at the end.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO TORTS.

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

1 SECTION 1. The legislature finds that Hawaii's design
2 professional firms engaged in work on highway projects are in a
3 unique position compared to others involved in highway projects.
4 The role of design professionals is minimal in scope, time, and
5 economic benefit. The scope of the design professional's work
6 is limited to the initial design of the highway, which is
7 minimal in contrast to the construction and maintenance of
8 highways. The time that design professionals are involved is
9 also minimal and usually limited to the initial planning stage
10 of the project. On the other hand, highway construction
11 typically takes years and maintenance extends over many decades.
12 Design professionals generally have no control over subsequent
13 construction and future maintenance activities that occur long
14 after their work has ended. Construction and maintenance costs
15 similarly greatly exceed design costs. For virtually all small
16 design firms, the liability risk far exceeds the financial
17 compensation for highway projects. This Act recognizes these
18 unique factors and affords appropriate relief.



1 SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§663- Design professional liability; highways. (a)
5 Any other law to the contrary notwithstanding, including but not
6 limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17,
7 and 663-31, in any case involving tort claims relating to the
8 design, construction, and maintenance of highways, where a
9 design professional is determined to be a joint tortfeasor along
10 with one or more other joint tortfeasors, and the degree of
11 negligence of the design professional is ten per cent or less,
12 including the vicarious liability of the design professional for
13 the negligent acts or omissions of the officers and employees of
14 the design professional, the liability of the design
15 professional for more than the design professional's pro rata
16 share of negligence shall not exceed the available policy limits
17 of the design professional's professional liability coverage;
18 provided that one of the following applies:

19 (1) The contract amount for design professional services
20 relating to the tort claim is \$500,000 or less and the
21 design professional is covered for the claim by a
22 professional liability insurance policy with limits of



1 no less than \$1,000,000 per occurrence and \$1,000,000
2 in the aggregate; or

3 (2) The contract amount for design professional services
4 relating to the tort claim is \$1,000,000 or less and
5 the design professional is covered for the claim by a
6 professional liability insurance policy with limits of
7 no less than \$1,000,000 per occurrence and \$2,000,000
8 in the aggregate.

9 (b) This section shall not apply to any design
10 professional with a gross annual revenue of \$10,000,000 or more
11 during any of the three calendar years immediately preceding the
12 effective date of the contract for design professional services
13 relating to the tort claim. Information produced pursuant to
14 this section relating to gross revenue shall be confidential and
15 used only for purposes of this section unless otherwise ordered
16 by the court.

17 (c) For purposes of this section:

18 "Available policy limits" means the remaining occurrence or
19 aggregate policy limits available after reduction for prior
20 claim payments made under the applicable professional liability
21 insurance policy.



1 "Contract amount" means the maximum charges permitted under
2 the contract; provided that if two or more design professional
3 firms share in a contract, the contract amount shall be the
4 share of maximum charges permitted for the design professional
5 against which the claim is asserted.

6 "Design professional" means a professional engineer,
7 architect, surveyor, or landscape architect licensed under
8 chapter 464."

9 SECTION 3. This Act shall apply prospectively only and
10 shall not affect events, acts, or omissions that occur, rights
11 that vest or mature, or proceedings begun, before its effective
12 date.

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act shall take effect upon its approval.

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII

