

Honolulu, Hawaii

FEB 13 2013

RE: S.B. No. 504
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committees on Economic Development, Government Operations and Housing and Commerce and Consumer Protection, to which was referred S.B. No. 504 entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

beg leave to report as follows:

The purpose and intent of this measure is to prohibit clauses requiring design professionals to defend governmental bodies in procurement contracts that are exclusively for the services of design professionals unless the liability arises from the design professional's fault.

Your Committees received testimony in support of this measure from the American Society of Civil Engineers; American Council of Engineering Companies; Limtiaco Consulting Group; Group 70 International; Insurance Factors; Hilo Direct Consultants, LLC; Architectural Diagnostics, Ltd.; Island Pacific Architecture, Inc.; Wiss, Janney, Elstner Associates, Inc.; Sarwar Structural Engineering Consulting Services; Engineering Concepts, Inc.; Inatsuka Engineering, LLC; Kennedy/Jenks Consultants; Wesley R. Segawa and Associates, Inc.; Kauahikua & Chun; URS Corporation; KAI Hawaii, Inc.; Belt Collins Hawaii, LLC; SSFM International, Inc.; HDR Engineering, Inc.; Austin, Tsutsumi & Associates, Inc.; Shimokawa Nakamura, Inc.; Weston Solutions, Inc.; Bills Engineering, Inc.; Riehm Owensby Planners Architects; Shimabukuro, Endo & Yoshizaki, Inc.; Design Partners Incorporated; Luersen Architects, Inc.; ECS, Inc.; Design Partners Incorporated; Santo Engineers, LLC; HiArch, LLC; AKTA, Ltd.; Yogi Kwong Engineers,



LLC; Makai Ocean Engineering, Inc.; Helber Hastert & Fee Planners, Inc.; Fukunaga & Associates, Inc.; WSP Hawaii, Inc.; Shigemura, Lau, Sakanishi, Higuchi and Associates, Inc.; Miyabara Associates, LLC; Thermal Engineering Corporation; Hirata & Associates, Inc.; Akinaka & Associates, Ltd.; Brown and Caldwell; and two individuals. Your Committees received testimony in opposition to this measure from the Hawaii Insurer's Council and the General Contractors Association of Hawaii. Your Committees received comments on this measure from the State Procurement Office.

Your Committees find that existing law permits clauses in procurement contracts of \$1,000,000 or more that require design professionals to defend governmental bodies for the liability of others such as contractors and subcontractors. Large contracts are typically in excess of \$1,000,000, but even projects that are less than \$1,000,000 can reach or exceed \$1,000,000 due to amendments to the contract.

Your Committees find that design professional liability insurance only covers damages or injuries caused by a design professional's negligence and will not advance the cost of defending other parties before the negligence of the design professional is established or cover damages caused by other parties. Thus, the design professional is placed in the position of having to pay upfront to defend the governmental body for the liability of others out of the design professional's own pocket. Moreover, unlike contractors or subcontractors, design professionals may be held personally liable because they hold personal licenses.

These risks are often unacceptable for smaller design professional firms in Hawaii, which are not in a position to self-insure or to bear the risk. Your Committees received testimony that due to these risks, smaller local firms have declined to work on government contracts of \$1,000,000 or more.

Your Committees find that the existing law poses unreasonable risks to design professionals and discourages them from working on government contracts. This results in less choice and competition, adversely affecting the long-term interests of the State and the public. This measure will redress the problem by prohibiting defense clauses in any government procurement contract exclusively for the services of design professionals unless the liability arises from the design professional's negligence or fault.

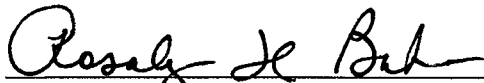


Your Committees have amended this measure by:

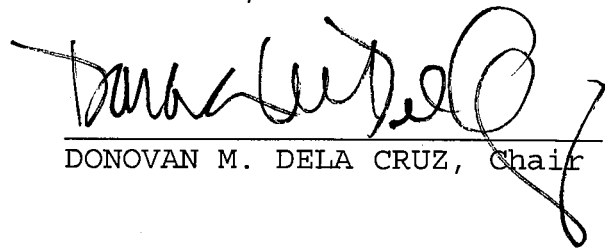
- (1) Amending the definition of a "governmental body" to exclude business entities retained or contracted by a public entity to manage or administer a contract for the entity; and
- (2) Making technical, nonsubstantive amendments to section 1 to reflect that the measure pertains to defense, rather than indemnification, clauses in government procurement contracts.

As affirmed by the records of votes of the members of your Committees on Economic Development, Government Operations and Housing and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 504, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 504, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committees on Economic
Development, Government
Operations and Housing and
Commerce and Consumer
Protection,



ROSALYN W. BAKER, Chair

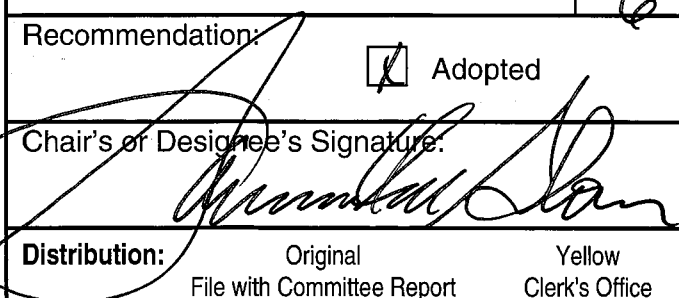


DONOVAN M. DELA CRUZ, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

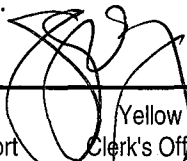
Record of Votes
Committee on Economic Development, Government Operations and Housing
EGH

Bill / Resolution No.:* SB 504	Committee Referral: EGH/CPN, JDL	Date: 2/6/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
DELA CRUZ, Donovan M. (C)	X			
SLOM, Sam (VC)	X			
BAKER, Rosalyn H.	X			
CHUN OAKLAND, Suzanne	X			
ENGLISH, J. Kalani				X
THIELEN, Laura H.	X			
WAKAI, Glenn	X			
TOTAL	6	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB 504	Committee Referral: EGH/CPN, JDL	Date: 2/06/13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
GALUTERIA, Brickwood (VC)	✓			✓
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama				✓
TANIGUCHI, Brian T.				✓
WAKAI, Glenn	✓			
SLOM, Sam	✓			
TOTAL	4	0	0	3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; margin-top: 10px;">  </div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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