STAND. COM. REP. NO. 22-3

Honolulu, Hawaii

FEB 1 2 2008

S.B. No. 2893 RE:

S.D. 1

Honorable Colleen Hanabusa President of the Senate Twenty-Fourth State Legislature Regular Session of 2008 State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and Affordable Housing, to which was referred S.B. No. 2893 entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

begs leave to report as follows:

The purpose of this measure is to provide fair and appropriate accountability of design professionals by allowing design professionals to be liable for only the percentage share of the damages attributable to the design professional for tort claims except when the design professional's degree of negligence is twenty-five per cent or more.

Testimony in support of this measure was submitted by MK Engineers, Ltd.; Engineering Solutions, Inc.; the American Society of Civil Engineers; KAI Hawaii, Inc.; the American Institute of Architects Hawaii State Council; the Coalition of Hawaii Engineering and Architectural Professionals; Pacific Geotechnical Engineers, Inc.; Austin, Tsutsumi & Associates, Inc.; Masa Fujioka & Associates; Consulting Structural Hawaii, Inc.; Gray, Hong, Nojima & Associates; Bills Engineering, Inc.; the Limtiaco Consulting Group; the American Council of Engineering Companies; Kauahikaua and Chun Architects; and one private individual. Testimony in opposition to this measure was submitted by the Hawaiian Electric Company and the Consumer Lawyers of Hawaii.

Your Committee finds that the potential liability with respect to the work of design professionals may be substantial and expensive. Design professionals are aware of their responsibility

2008-1248 SSCR SMA.doc  to prepare designs and supervise the construction of safe and secure facilities, and should they be negligent in their work, they must bear the responsibility for those faults. However, testimony indicates that design professionals are subjected to unfair judgments and settlements, which raises their insurance premiums. Allowing design professionals to be liable for only the percentage share of damages attributable to the design professional in tort claims except when the design professional's degree of negligence is twenty-five per cent or more, will provide fairness in the allocation of risk.

Your Committee has amended this measure by:

- (1) Inserting an effective date of July 1, 2050, to ensure further discussion on this issue by the Committee on Judiciary and Labor; and
- (2) Making technical, nonsubstantive amendments for the purposes of style and clarity.

Your Committee believes that this measure, as amended, fulfills the intent of this measure, which is to provide fair and appropriate accountability of design professionals.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2893, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2893, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on behalf of the members of the Committee on Commerce, Consumer Protection, and Affordable Housing,

RUSSELL S. KOKUBUN, Chair

## The Senate Twenty-Fourth Legislature State of Hawaii

## Record of Votes Committee on Commerce, Consumer Protection and Affordable Housing CPH

Bill / Resolution No.:*	Committee Referral:		C	Date:	
5B 2893	CPH, JDL			2/7/08	
The committee is reconsidering its previous decision on this measure.					
If so, then the previous decision was to:					
The Recommendation is:					
Pass, unamended Pass, with amendments Hold Recommit 2312 2311 2310 2313					
Members		Aye	Aye (WR	) Nay	Excused
KOKUBUN, Russell S. (C)		<b>✓</b>			
IGE, David Y. (VC)		/			107 10 10 10 10 10 10 10 10 10 10 10 10 10
ESPERO, Will					
IHARA, Jr., Les					V
SAKAMOTO, Norman					<b>V</b>
TANIGUCHI, BRIAN T.			<b>V</b>		
TRIMBLE, Gordon					
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TOTAL		3	2		7
Recommendation:					
Adopted Not Adopted					
Chair's or Designee's Signature:					
And Mag					
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy					
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\*Only one measure per Record of Votes