



## TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1064, S.D. 1, H.D. 1, RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Thursday, March 10, 2016

**TIME:** 3:15 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Stella M.L. Kam, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments on Senate Bill No. 1064, S.D. 1, H.D. 1.

This bill is intended to resolve the problem faced by government agencies in procuring professional services when the selection committee has fewer than three persons deemed qualified to provide the professional services sought by an agency. However, the bill, in its current form, does not appear to resolve the problem, and we propose alternative wording that we suggest will resolve the problem.

Section 103D-304, Hawaii Revised Statutes (HRS), sets forth the process for government agencies to follow in procuring professional services. First, pursuant to section 103D-304(b), HRS, the agency must advertise and solicit applications from persons who provide professional services. Second, pursuant to section 103D-304(c), HRS, the head of the agency must designate a review committee to screen the applications and prequalify the applicants who meet the general qualifications. During the fiscal year, when the agency needs a particular professional service, the head of the agency designates a selection committee to evaluate the prequalified persons pursuant to section 103D-304(d), HRS. The review committee's task is different from the selection committee's task because the review committee prequalifies persons as generally qualified, whereas the selection committee members are seeking specific skills and background for a particular task.

The wording of the current version of the bill does not resolve the targeted problem because it allows the procurement to proceed only if the initial prequalified list (compiled by the review committee) has fewer than three persons. If an agency's selection committee seeks specific skills and experience that the prequalified individuals do not possess, the agency will not be able to procure the services.

The Department of the Attorney General recommends the following wording for section 2 of S.B. No. 1064:

SECTION 2. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) The selection committee shall evaluate the persons who were qualified under subsection (c), and, based on the selection criteria, shall rank a minimum of three persons [~~based on the selection criteria~~] and send the ranking to the head of the purchasing agency. In the event the selection committee determines that there are fewer than three qualified persons meeting the selection criteria, a request for an alternative procurement may be made to the chief procurement officer in accordance with administrative rules adopted by the procurement policy board.

The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause."

Finally, we note that the reference in section 1 of the bill (page 1, lines 4-5) to the "review committee" should be changed to "selection committee." As stated above, the review committee only compiles the prequalified list. It is the selection committee, not the review committee, that evaluates from the prequalified list and sends the ranking of the persons specifically qualified for the agency's particular need (as designated in the procurement solicitation) to the head of the purchasing agency.

We respectfully ask the Committee to pass this bill with the recommended amendments.



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March 8, 2016

**House Committee on Judiciary**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary

Subject: **SB 1064 SD1 HD1, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

Dear Chair Rhoads, Vice Chair San Buenaventura, and Committee Members:

The American Council of Engineering Companies of Hawaii (ACECH) represents more than 70 member firms with over 1,500 employees throughout Hawaii. ACECH member firm projects 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. Procurement of design professional services is a serious business.

“Qualifications-based selection” (QBS) is the nationally recognized model procurement code for the procurement of design professional services. ACECH is a strong supporter of HRS §103D-304, the State’s QBS law. The Committee may recall that, prior to enactment of §103D-304, procurement of professional design services in Hawaii was rife with abuse and corruption, and negative news articles greatly damaged public faith in our procurement processes. §103D-304 was strongly supported by ACECH to provide fairness and transparency in public procurement, and to restore public faith in procurement of design professional services. The legislature clearly felt that design professional procurement deserved special care, as it limited procurement methods to sections 103D-304 and -307 (emergency), while allowing other professional services to be obtained through other methods (including sole source procurement).

Following enactment of §103D-304, the state procurement office put into place rules (HAR §3-122-663) that did not follow the intent of the law. In February 2014, a decision of the Supreme Court of the State of Hawaii upheld a 2012 Circuit Court decision that found that the rule was invalid and that the law “must be read by its plain and obvious meaning” and the rule “could not be justified by the need to “fill a gap left in HRS § 103D-304,” because “[t]he plain language of section 304 does not leave any such gaps[.]” (Decision SCAP-12-0000789). The Court’s ruling resulted in considerable negative press regarding procurement actions that were conducted using the rules and in violation of the law.

Last year, ACECH spent considerable effort on this bill. We offered to work with the State Procurement Office to evaluate whatever issue this bill seeks to address, and to determine the best way to respond to that issue without undermining Hawai'i's good procurement law. We also discussed the bill with the Governor, who told us he did not support the bill.

The Chief Procurement Officer (CPO) later informed us she would be dropping her efforts to pursue the bill because the Office had reviewed the cases requesting procurement exemption, and found that none of them were related to procurement of design professional services. We again state that we are willing to work with the SPO if they have truly identified an issue, as it is in the public's best interest and our members' best interest to have an efficient procurement system. However, we protest making changes when the CPO has stated that no problem exists.

ACECH beseeches this committee to uphold the good procurement law established by §103D-304, and to defer this bill. We appreciate the opportunity to provide testimony on this matter. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF HAWAII

A handwritten signature in blue ink, appearing to read "Robin M. Lim".

Robin M. Lim, P.E.  
President

## AMERICAN INSTITUTE OF ARCHITECTS

March 10, 2016

Honorable Karl Rhoads, Chair  
House Committee on Judiciary

Subject: **Senate Bill 1064 SD1 HD1**  
**Relating to Procurement of Professional Services**

Dear Representative Rhoads and Members of the Committee,

My name is Daniel Chun, Fellow of the American Institute of Architects, practicing local architect for 40 years and President of the American Institute of Architects Hawaii State Council. AIA **STRONG OPPOSES** SB 1064 SD1 HD1 that proposes to "legalize" past violations of HRS 103D-304 struck down by Hawaii Supreme Court in Asato vs. Procurement Policy Board (Decision SCAP-12-0000789)

I was personally involved in drafting the current language of HRS 103D-304; in response to past corrupt practices in awards for design professional contracts. The current language was carefully crafted, meets federal standards for the award of federally-subsidized projects, and had the benefit of the previous 45 other state laws of this kind for awarding of professional service contracts. AIA also understands there are few, to none, contract award protests related to design professional service contracts; one of the signs the current language is good and adequate to the task.

AIA was gratified to read the Court's decision that carefully examined the history behind the current language, and then held the PPB to be in violation. So now the PPB comes forward asking the legislature to legitimize this very large philosophical change allowing less than three qualified persons be on the list prepared pursuant to subsections (b) and ( c ). Allowing less than three persons violates long-standing practice.

In procurement law every single word change can have a huge ripple effect. If you pass the flawed language of HD1 you allow only one person to be evaluated; a perfect smokescreen for public corruption!

In certain non-design professional service procurements the state may find itself with few qualified persons. That's the situation for which exemptions are allowed by other existing sections of Hawaii Procurement Code. Don't revise this section for that unusual event. As this bill is continued from 2015 session, AIA asks you to vote to kill it. Thank you for this opportunity to **STRONGLY OPPOSE** SB 1064 HD1.



March 9, 2016

Subject: **SB1064, SD1, HD1 Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

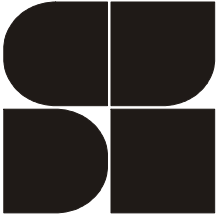
Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I am in **Strong Opposition to SB 1064, SD1, HD1** Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code (Brooks Act) for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,  
Kukulu LLC (dba Kukulu AE)

*June Nakamura, PE, FACHE*



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

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

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

### **TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
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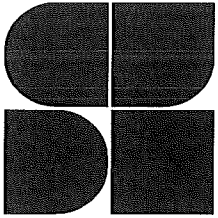
Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and  
Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I **am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,  
Shigemura, Lau, Sakanashi, Higuchi and Associates

Howard K.C. Lau, P.E.  
President



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

March 9, 2016

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Members of the House Committee on Judiciary:

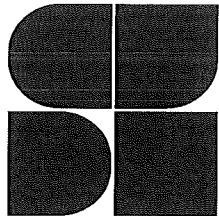
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I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,  
Shigemura, Lau, Sakanashi, Higuchi and Associates

Craig H. Sakanashi, P.E.  
Vice-President





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

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

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Members of the House Committee on Judiciary:

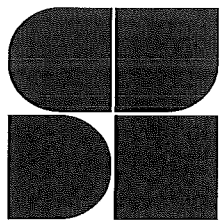
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I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,  
Shigemura, Lau, Sakanashi, Higuchi and Associates

Wayne K. Higuchi, P.E.  
Vice-President

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



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

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

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Members of the House Committee on Judiciary:

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I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,  
Shigemura, Lau, Sakanashi, Higuchi and Associates

Beverly Ishii-Nakayama, P.E.  
Principal

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



**SHIMABUKURO, ENDO & YOSHIZAKI, INC.**

*Civil, Environmental & Structural Engineers*

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E-mail: seyeng@seyeng.com

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair;  
and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I oppose SB 1064, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are founded on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

Howard K. Endo, Ph.D., P.E.  
President

HKE:sno



THE LIMTIACO CONSULTING GROUP  
CIVIL ENGINEERING AND ENVIRONMENTAL CONSULTANTS

March 9, 2016

House Committee on Judiciary

Hearing: Thursday, March 10, 2016, 3:15 pm, Conference Room 325

Subject: Testimony in Opposition  
SB1064 Relating to Procurement of Professional Services

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:

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.

Qualification Based Selection (QBS) is the basis of fair and transparent procurement of professional engineering services. Without QBS procurement, government agencies will be subject to more public scrutiny of "pay-to-play" contracting.

TLCG is opposed to SB1064 because it removes the responsibility of a selection committee to rank a minimum of three qualified firms. Without this requirement, government agencies could hand-pick favorite companies or biggest donor, resulting in "pay-to-play" contracting. TLCG prefers design professional selection to occur based on qualifications and integrity in accordance with HRS §103D-304.

Thank you for an opportunity to express my concerns and mahalo for your commitment to making Hawaii a better place.

Sincerely,  
*The Limtiaco Consulting Group, Inc.*



John H. Katahira, P.E.  
President

March 9, 2016

**Subject: SB1064, Relating to Procurement of Professional Services**

## TESTIMONY IN OPPOSITION

Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325

(House Committee on Judiciary)

**Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:**

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I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Sincerely,

**HART CROWSER, INC.**



**VIJAYA TUMMALA, P.E., CFM, CISEC**

Associate Environmental Engineer

[vijaya.tummala@hartcrowser.com](mailto:vijaya.tummala@hartcrowser.com)

(808)369-0731

March 9, 2016

**Subject: SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

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Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair;  
and Members of the House Committee on Judiciary:

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I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Gene Albano', with a stylized flourish at the end.

Gene Albano, PE LEED® AP  
President  
WSP Hawaii



element environmental llc  
environmental · engineering · water resources

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
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Respectfully submitted,

Ryan Yamauchi, P.E.  
Element Environmental, LLC

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

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Respectfully submitted,

Ken Hayashida  
KAI Hawaii, Inc.





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

Sheryl E. Nojima, PhD, PE  
Michael H. Nojima, PE, LEED AP  
Craig I. Nishimura, PE  
Guy K. Fukushima  
Toby T. Hanzawa, PE, LEED AP  
Gavin Y. Masaki, PE, LEED AP  
Winston M. Taniguchi, PE

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March 9, 2016

**Committee on Judiciary**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary

Subject: **Testimony in Opposition of SB1064, Relating to Procurement of Professional Services**  
Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)

Dear Chair Rhoads, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary:

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Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Sheryl E. Nojima, PhD, P.E.  
President

SN:MN:rl



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

Sheryl E. Nojima, PhD, PE  
Michael H. Nojima, PE, LEED AP  
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March 9, 2016

**Committee on Judiciary**

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(House Committee on Judiciary)

Dear Chair Rhoads, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and **I am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Michael H. Nojima, PE, LEED<sup>TM</sup> AP  
Vice President

MN:SN:rl



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

Sheryl E. Nojima, PhD, PE  
Michael H. Nojima, PE, LEED AP  
Craig I. Nishimura, PE  
Guy K. Fukushima  
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**

March 9, 2016

**Committee on Judiciary**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary

Subject: **Testimony in Opposition of SB1064, Relating to Procurement of Professional Services**  
Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)

Dear Chair Rhoads, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I am in strong opposition to SB 1064, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

GRAY, HONG, NOJIMA & ASSOCIATES, INC.

Craig I. Nishimura, P.E.  
Vice President

CN:SN:rl



March 9, 2016

Honorable Representatives Karl Rhoads, Chair  
Joy A. San Buenaventura, Vice Chair  
and Members of the House Committee on Judiciary:

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

I have been in practice as a registered professional engineer in Hawaii for 40 years and have been privileged to provide engineering services to various State and County agencies. **I am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure. I encourage you not to pass this bill.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

R. C. Katahara, P.E.  
Principal  
MK Engineers, Ltd.





**Pacific Geotechnical Engineers, Inc.**

*Soils & Foundation Engineering Consultants*

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

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair;  
and Members of the House Committee on Judiciary:

I am an engineering consultant who has been practicing in Hawaii for over 25 years, and I **am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 is based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

Pacific Geotechnical Engineers, Inc.

A handwritten signature in blue ink, appearing to read 'Glen Y.F. Lau', is written over the printed name.

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



# GEOLABS, INC.

*Geotechnical Engineering and Drilling Services*

---

March 9, 2016

SUBJECT: **SB1064, Relating to the Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 PM**

**Conference Room 325**

**(House Committee on Judiciary)**

Honorable Representatives:

Karl Rhoads, Chair;

Joy A. San Buenaventura, Vice Chair; and

Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I **am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, proposing to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that HRS §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please contact me if you have any questions regarding my testimony.

Respectfully submitted,

**GEOLABS, INC.**

**Robin M. Lim, P.E.**

President



## ENGINEERING CONCEPTS, INC.

Consulting Engineers

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

### **TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I **am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

Anna Sasaki, Vice President  
Engineering Concepts, Inc.  
1150 South King Street, Suite 700  
Honolulu, Hawaii 96814



American Public Works Association Hawaii Chapter

March 8, 2016

**House Committee on Judiciary**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325**

Honorable Representatives Karl Rhoads, Chair, Joy A. Buenaventura, Vice Chair; and Members of the House Committee on Judiciary

**Subject: SB 1064, SD1, HD1, Relating to Procurement of Professional Services  
TESTIMONY in STRONG OPPOSITION**

Dear Chair Rhoads, Vice Chair Buenaventura, and Committee Members:

The American Public Works Association Hawaii Chapter (APWA) represents numerous public works officials, engineers from State and Counties, utilities and private sector design professionals. The primary purpose of our State Procurement Code relating to professional services was to ensure that the best qualified professional service provider is selected to work on public sector projects and to allow for transparency in the procurement process.

Our current procurement law, Relating to Procurement of Design Professional Services (for Engineers and Architects) is based on qualification-based selection (QBS) law. QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process to select the best qualified firms.

We **Strongly Oppose** measures that can potentially threaten or weaken our current design professional QBS procurement system. Solicitations by agencies should be written to allow for fair competition of qualified firms. Agencies that establish rules that allow selection of design professional firms without following the proper selection procedures are in violation. A court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure. The administrative rules should follow the current QBS law relating to the selection of qualified A/E firms based on the main criteria of: Experience, Past Performance and Capacity to do the work. This Brooks Act language is followed throughout the Federal FAR systems of selections.

We appreciate the opportunity to provide testimony on this matter. Please do not hesitate to contact us if you have any questions.

Sincerely,  
American Public Works Association Hawaii Chapter

*Lester Fukuda*

Lester Fukuda, PE, FACEC



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 09, 2016 12:03 PM  
**To:** JUDtestimony  
**Cc:** jessdunn24@gmail.com  
**Subject:** Submitted testimony for SB1064 on Mar 10, 2016 15:15PM

**SB1064**

Submitted on: 3/9/2016

Testimony for JUD on Mar 10, 2016 15:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Dunn	Individual	Oppose	No

Comments: Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary: I am an environmental consultant in Hawaii, and I am in strong opposition to SB 1064, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure. I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony. Respectfully submitted, Jessica Dunn

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.

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March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I **am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

Corey Matsuoka, P.E., PMP, LEED AP  
SSFM International, Inc.



## ENGINEERING CONCEPTS, INC.

Consulting Engineers

March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

### **TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:

I am an engineering consultant in Hawaii, and I **am in strong opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services. The law protects the public by providing an open and transparent procurement process. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me should you have any questions regarding my testimony.

Respectfully submitted,

Craig Arakaki, President  
Engineering Concepts, Inc.  
1150 South King Street, Suite 700  
Honolulu, Hawaii 96814

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 09, 2016 2:44 PM  
**To:** JUDtestimony  
**Cc:** bkunio@aol.com  
**Subject:** \*Submitted testimony for SB1064 on Mar 10, 2016 15:15PM\*

**SB1064**

Submitted on: 3/9/2016

Testimony for JUD on Mar 10, 2016 15:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bruce K. Meyers	Okahara and Associates, Inc.	Oppose	No

Comments:

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.

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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

## 2016 Hawai'i Section Officers

### **PRESIDENT**

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### **PRESIDENT-ELECT**

**Tim Goshi, P.E.**

KAI Hawaii, Inc.  
50 S. Beretania Street, #C-119C  
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(808) 791-3966  
e-mail: [tgoshi@kaihawaii.com](mailto:tgoshi@kaihawaii.com)

### **VICE PRESIDENT**

**Lara Karamatsu, P.E.**

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

### **SECRETARY**

**Jason Y. Kage, P.E.**

CH2M Hill, Inc.  
1132 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813  
(808) 943-1133  
e-mail: [jason.kage@ch2m.com](mailto:jason.kage@ch2m.com)

### **TREASURER**

**Eric Arakawa, P.E.**

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e-mail: [eric.a@tlcgohawaii.com](mailto:eric.a@tlcgohawaii.com)

### **IMMEDIATE PAST-PRESIDENT**

**Glenn Miyasato, P.E.**

MKE Associates, LLC  
99-205 Moanalua Road, Suite 205  
Aiea, Hawai'i 96701  
(808) 488-7579  
e-mail: [glenn@mkellc.com](mailto:glenn@mkellc.com)

### **YOUNGER MEMBER FORUM**

#### **PRESIDENT**

**Amanda Tanaka, P.E.**

Fukunaga & Associates, Inc.  
1357 Kapiolani Blvd, Ste 1530  
Honolulu, Hawai'i 96814  
(808) 944-1821  
e-mail: [atanaka@ascehawaii.org](mailto:atanaka@ascehawaii.org)

March 9, 2016

Honorable Karl Rhoads, Chair

Honorable Joy A. San Buenaventura, Vice Chair

Members of the House Committee on Judiciary

## TESTIMONY IN OPPOSITION TO SB 1064, SD1, HD1 RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES

The American Society of Civil Engineers was established in 1852 and is the oldest professional engineering organization in the United States. More than 1,000 members are assigned to Hawaii. The Hawaii Section of ASCE was established in 1937 and is comprised of more than 400 civil engineers from both the public and private practice.

We oppose the passage of SB 1064, SD1, HD1 which would amend HRS §103D-304 and eliminate the requirement that professional services be procured by reviewing at least three qualified firms. The standard of professional services selection is described in ASCE Public Policy Statement 304 – Qualifications-Based Selection of Professional Engineers. The selection process is a standard specified by the Brooks Architect-Engineers Act of 1972. §5-104(2) of the American Bar Association's Model Procurement Code for State and Local Governments for the engagement of engineering services recommends that selection shall be based on discussions with no less than three firms regarding the contract and then recommending no less than three firms in order of preference to be the most highly qualified firms.

We urge the tabling of SB 1064, SD1, HD1, which would eliminate the transparency and integrity of the selection of professional services under existing statutes.

Thank you for the opportunity to testify on this bill.

Sincerely yours,

Owen Miyamoto

Chair, Local Legislative Affairs Committee



Civil Engineers – Designers and Builders of the Quality of Life

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 09, 2016 3:05 PM  
**To:** JUDtestimony  
**Cc:** dan@hawaiianarchitects.com  
**Subject:** Submitted testimony for SB1064 on Mar 10, 2016 15:15PM

**SB1064**

Submitted on: 3/9/2016

Testimony for JUD on Mar 10, 2016 15:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Chun	Individual	Oppose	No

Comments: HRS 103D-304 already allows for less than three persons in its subsection (j) for small purchase contracts currently \$250,000.

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.

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March 9, 2016

Subject: **SB1064, Relating to Procurement of Professional Services**

**TESTIMONY IN OPPOSITION**

**Hearing Date: Thursday, March 10, 3:15 p.m., Conference Room 325  
(House Committee on Judiciary)**

Honorable Representatives Karl Rhoads, Chair; Joy A. San Buenaventura, Vice Chair; and Members of the House Committee on Judiciary:

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 opposition to SB 1064**, Relating to Procurement of Professional Services, which proposes to alter the qualifications-based selection (QBS) law for procurement of design professional services. The QBS procedures in HRS §103D-304 are based on the nationally recognized model procurement code for the procurement of design professional services, including methods followed by most other states and the Federal Government. The law protects the public by providing an open and transparent procurement process for selecting Design Professionals. When the State Procurement Office established rules that allowed selection of design professional firms without following the proper procedure, abuses occurred. A subsequent court ruling stating that §103D-304 must be followed resulted in considerable negative press regarding the procurement actions that occurred without following the QBS procedure.

I appreciate the opportunity to provide testimony regarding this matter. Please do not hesitate to contact me at (808) 944-1821 should you have any questions regarding my testimony.

Very truly yours,



Jon K. Nishimura, P.E.  
President  
Fukunaga & Associates, Inc.

