
SENATE CONCURRENT RESOLUTION

ESTABLISHING A TASK FORCE TO EXAMINE THE ISSUE OF DISCRETIONARY
FUNCTION EXCEPTION FOR THE STATE AND COUNTIES.

1 WHEREAS, in 1957, the Legislature passed the State Tort
2 Liability Act, modeled after its federal counterpart, the
3 Federal Tort Claims Act; and
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5 WHEREAS, at the time the Legislature adopted the State Tort
6 Liability Act, most of its language was taken directly from the
7 Federal Tort Claims Act; and
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9 WHEREAS, in interpreting the State Tort Liability Act, the
10 courts have failed to protect the State from liability in
11 situations in which the federal government would be protected
12 under the Federal Tort Claims Act for the same types of acts;
13 and
14

15 WHEREAS, clarification is needed to determine whether the
16 discretionary function exception under state law requires the
17 State and counties to have the same protection from liability
18 that the United States is afforded under federal law; now,
19 therefore,
20

21 BE IT RESOLVED by the Senate of the Twenty-third
22 Legislature of the State of Hawaii, Regular Session of 2006, the
23 House of Representatives concurring, that a task force be
24 established to examine the issue of the discretionary function
25 exception as to the State and the counties; and
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27 BE IT FURTHER RESOLVED that the membership of the task
28 force shall consist of the following:
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30 (1) The Attorney General or the Attorney General's
31 designee;

32 (2) The Director of Transportation or the Director's
33 designee;
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- 1 (3) One member of the Hawaii State Judiciary;
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- 3 (4) A member from each county's executive branch;
- 4
- 5 (5) A member from the Corporation Counsel for each county;
- 6
- 7 (6) A member of the Hawaii State Bar Association who is
- 8 primarily engaged in representing plaintiffs in cases
- 9 against the State or counties, to be chosen by the
- 10 president of the Hawaii State Bar Association;
- 11
- 12 (7) A member of the Hawaii State Bar Association who is
- 13 primarily engaged in insurance defense work, to be
- 14 chosen by the president of the Hawaii State Bar
- 15 Association;
- 16
- 17 (8) One faculty member from the University of Hawaii,
- 18 William S. Richardson School of Law; and
- 19
- 20 (9) One member from the public to be appointed by the
- 21 Governor; and
- 22

23 BE IT FURTHER RESOLVED that the faculty member from the
24 University of Hawaii, William S. Richardson School of Law shall
25 serve as the chairperson and facilitator of the task force for
26 organizational purposes; and

27
28 BE IT FURTHER RESOLVED that the task force's mission shall
29 be to:

- 30
- 31 (1) Determine whether the State should be excepted from
- 32 liability for all intentional torts and any claim for
- 33 negligent hire, retention, training, or supervision of
- 34 an employee who is alleged to have committed an
- 35 intentional tort;
- 36
- 37 (2) Determine whether the discretionary function exception
- 38 should be interpreted to provide the State with the
- 39 same type of protection from liability that the United
- 40 States is afforded pursuant to the Federal Tort Claims
- 41 Act, title 28 United States Code section 2680(a);
- 42
- 43 (3) Determine whether the discretionary function exception
- 44 should include claims arising out of the adequacy of



1 the design of a highway as defined in section
2 264-1(a) (1), Hawaii Revised Statutes, or associated
3 structures, and under what circumstances, if any, the
4 discretionary function exception should apply to the
5 design;


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7 (4) Determine whether the counties should be exempt from
8 liability for the intentional torts of its employees;
9 and

10
11 (5) Prepare proposed legislation; and
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13 BE IT FURTHER RESOLVED that the task force shall provide
14 the Legislature with a copy of its report, including proposed
15 legislation, at least twenty days prior to the convening of the
16 Regular Session of 2007; and
17

18 BE IT FURTHER RESOLVED that certified copies of this
19 Concurrent Resolution be transmitted to the Governor, the
20 Attorney General, the Director of Transportation, the Mayor of
21 each county, the Corporation Counsel for each county, the
22 President of the Hawaii State Bar Association, and the Dean of
23 the William S. Richardson School of Law.
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OFFERED BY:



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