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# SENATE CONCURRENT RESOLUTION

ESTABLISHING A TASK FORCE TO EXAMINE THE ISSUE OF DISCRETIONARY  
FUNCTION EXCEPTION FOR OF 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,  
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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;

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33           (2) A member from each county's executive branch;  
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- 1 (3) One member of the Hawaii State Judiciary;
- 2
- 3 (4) One faculty member from the University of Hawaii,
- 4 William S. Richardson School of Law;
- 5
- 6 (5) One member of the Hawaii State Bar Association who is
- 7 primarily engaged in representing plaintiffs in cases
- 8 against the State or counties, to be chosen by the
- 9 president of the Hawaii State Bar Association;
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- 11 (6) One member from Consumer Lawyers of Hawaii;
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- 13 (7) One member from the Association of Trial Lawyers of
- 14 America;
- 15
- 16 (8) One member from the Hawaii Government Employees
- 17 Association; and
- 18
- 19 (9) One member from United Public Workers;
- 20

21 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:

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- 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;

6  
7 (4) Determine whether the counties should be exempt from  
8 liability for the intentional torts of its employees;  
9 and

10 (5) Prepare proposed legislation; and

11  
12  
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 Chief Justice of the Hawaii Supreme Court,  
21 the Director of Transportation, the Mayor of each county, the  
22 Corporation Counsel for each county, the President of the Hawaii  
23 State Bar Association, the Dean of the William S. Richardson  
24 School of Law, Consumer Lawyers of Hawaii, Hawaii Government  
25 Employees Association, United Public Workers, and the  
26 Association of Trial Lawyers of America.

