

Honolulu, Hawaii

Ag: 127, 2006

RE: H.B. No. 237
H.D. 3
S.D. 1
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 237, H.D. 3, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to address the application of joint and several liability in tort claims against governmental entities following the passage of Act 213, Session Laws of Hawaii 1994, codified as section 663-10.5, Hawaii Revised Statutes (HRS), and its construction by the Hawaii Supreme Court in Kienker v. Bauer, slip op. no. 25856, March 14, 2006.

The Kienker decision ruled that the abolition of joint and several liability by section 663-10.5, HRS, did not apply to highway design and maintenance claims. This decision was based upon the legislative intent to retain governmental joint and several liability for highway claims expressed in the legislative history of

HB237 CD1 HCCR HMS 2006-3776



Act 213 in both House Standing Committee Report 654 and Senate Standing Committee Report 1350. Those reports expressed the intent that liability should be retained for highway maintenance and design because of government's unique responsibility over highways and the important public policy of providing safe highways for our citizens.

This measure, as received, provides for the abolition of governmental joint and several liability except where the State is covered by a primary insurance policy. Upon further reflection and discussion, your Committee on Conference acknowledges government's unique role in highway maintenance and design and the strong public policy of providing safe roads for Hawaii's families, as expressed in the past legislative history on this subject. Accordingly, your Committee on Conference has amended this bill by:

- (1) Deleting the exception relating to insurance coverage;
- (2) Adding language to retain an exception for highway maintenance and design; and
- (3) Changing the effective date to upon approval with retrospective application to the extent permitted by law.

As amended, this bill abolishes governmental joint and several liability, except for all damages in highway cases where government has prior notice or negligence of 25 percent or more, consistent with the Kienker decision.

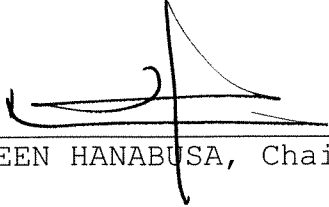
Your Committee on Conference believes this amended measure correctly reflects the original intent of Act 213 prior to the Kienker decision. To avoid any confusion as to the application of section 663-10.5, HRS, following Kienker, this measure is given retroactive application to the extent permitted by law so as to implement its intent without violating accrued or substantive rights.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 237, H.D. 3, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 237, H.D. 3, S.D. 1, C.D. 1.



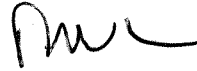
Respectfully submitted on behalf
of the managers:

ON THE PART OF THE SENATE



COLLEEN HANABUSA, Chair

ON THE PART OF THE HOUSE



ROBERT N. HERKES, Co-Chair



SYLVIA LUKE, Co-Chair



Hawaii State Legislature

Record of Votes of a
Conference Committee

CCR 86-06

| | |
|---|-------------------------------|
| Bill / Concurrent Resolution No.: HB 237, HD 3, SD 1 | Date/Time: 4/27/06 2:30 PM |
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The recommendation of the House and Senate managers is to pass with amendments (CD).



The Committee is reconsidering its previous decision.

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| <input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure | <input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure. |
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| Senate Managers | A | WR | N | E | House Managers | A | WR | N | E |
|-------------------------|---|----|---|---|--|---|----|---|---|
| HANABUSA, Colleen, Chr. | x | | | | ARAKAKI, Dennis A., Co-Chr. | | | | x |
| HEE, Clayton | | | | x | HERKES, Robert N., Co-Chr. | x | | | |
| WHALEN, Paul | x | | | | LUKE, Sylvia, Co-Chr. | x | | | |
| | | | | | SOUKI, Joseph M. | | | | x |
| | | | | | MARUMOTO, Barbara C. | x | | | |
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| TOTAL | 2 | | | 1 | TOTAL | 3 | | | 1 |

A = Aye WR = Aye with Reservations N = Nay E = Excused

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| Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted |
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| Senate Lead Chair's or Designee's Signature:  | House Lead Chair's or Designee's Signature:  |
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