
A BILL FOR AN ACT

RELATING TO LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the limitations on
2 state and county liability have proven to be beneficial to the
3 state and county governments, as well as the public. The
4 liability protections have reduced the exposure of the state and
5 county governments to substantial damages and, as a result, have
6 allowed the state and county governments to keep recreational
7 areas and public beach parks with potentially dangerous
8 conditions open to the public. The legislature further finds
9 that state and county compliance with the statutorily required
10 public warning of dangerous conditions at recreational areas and
11 public beach parks has contributed to an improvement in public
12 safety in these areas, which justifies making the current
13 liability exemptions for state and county governments relating
14 to recreational areas and public beach parks and actions of
15 county lifeguards permanent.



1 Part I

2 SECTION 2. The purpose of part I of this Act is to make
3 permanent or to extend certain liability protections for state
4 and county governments.

5 SECTION 3. Act 190, Session Laws of Hawaii 1996, as
6 amended by Act 101, Session Laws of Hawaii 1999, as amended by
7 Act 170, Session Laws of Hawaii 2002, is amended by amending
8 section 7 to read as follows:

9 "SECTION 7. This Act shall take effect on July 1, 1996[+
10 ~~provided that this Act shall be repealed on June 30, 2007]."~~

11 SECTION 4. Act 170, Session Laws of Hawaii 2002, is
12 amended by amending section 5 to read as follows:

13 "SECTION 5. This Act shall take effect upon its approval[+
14 ~~provided that section 1 of this Act shall be repealed on June~~
15 ~~30, 2007]."~~

16 SECTION 5. Act 82, Session Laws of Hawaii 2003, is amended
17 by amending section 8 to read as follows;

18 "SECTION 8. This Act shall take affect on July 1, 2003, and
19 shall be repealed on June 30, [~~2008-~~] 2010."

PART II

SECTION 6. The purpose of part II of this Act is to allow the State to indemnify the counties, under certain circumstances.

SECTION 7. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Indemnification of county agencies. (a) To receive county aid, assistance, support, benefits, services, and interests in or rights to use county property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

(1) The governor approves the State's proposed indemnification; and

(2) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.



1 (b) An indemnity provision not in strict compliance with
2 this section shall not give rise to a claim against the State
3 under chapter 661 or otherwise waive the State's sovereign
4 immunity."

5 SECTION 8. Section 41D-8.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§41D-8.5 Insurance for indemnification.** The comptroller
8 may:

9 (1) Obtain sufficient loss insurance to cover the
10 liability of the State that may arise from indemnity
11 provisions agreed to pursuant to section 29-15.5;

12 [~~and~~]

13 (2) Obtain sufficient loss insurance to indemnify, defend,
14 and hold harmless a county providing assistance,
15 services, rights, or permission to use county property
16 to a state agency under an indemnity agreement
17 provision pursuant to section 46- ; and

18 (3) Obtain appropriate and sufficient reinsurance to cover
19 the liability of a captive insurance company
20 established pursuant to section 41D-2."



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PART III

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval, provided that section 2 and section 3 of this Act shall take effect on June 29, 2007.



Report Title:

Government Liability

Description:

Makes permanent the temporary liability protection of state and county governments for public use of certain recreational areas and public beach parks and the acts or omissions of lifeguards. Allows State to indemnify counties when a state agency uses county facilities or avails itself of county aid or support.
(SB1603 HD2)

