

STAND. COM. REP. NO. 326

Honolulu, Hawaii

Feb 13, 2007

RE: H.B. No. 1175  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred H.B. No. 1175 entitled:

"A BILL FOR AN ACT RELATING TO TORT ACTIONS,"

begs leave to report as follows:

The purpose of this bill is to address the application of joint and several liabilities in tort claims relating to highway maintenance and design against governmental entities by limiting liability to the percentage of the share of damages attributable to the governmental entity.

The Department of the Attorney General, Department of Transportation, Department of the Corporation Counsel of the City and County of Honolulu, Office of the Corporation Counsel of the County of Hawaii, and the American Council of Engineering Companies of Hawaii testified in support of this bill. The Consumer Lawyers of Hawaii, Coalition of Hawaii Engineering and Architectural Professionals, Hawaiian Telcom, Hawaiian Electric Company, Hawaiian Electric Light Company, and Maui Electric Company testified in opposition to this measure. The Mayor of the County of Hawaii submitted comments on this bill.

In 2006, the Hawaii Supreme Court ruled in Kienker v. Bauer, that the abolition of joint and several liabilities by section 663-10.5, Hawaii Revised Statutes, 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 both House and Senate

HB1175 HD1 HSCR TRN HMS 2007-1964



Standing Committee Reports for Act 213, Session Laws of Hawaii 1994, because of government's unique responsibility over highways and the important public policy of providing safe highways for our citizens.

While governmental entities do play a role in the design and maintenance of highways, your Committee finds that these entities should not be held liable for more than their fair share of liability when they are determined to be joint tortfeasors.

Your Committee also believes that protection for joint and several liability should be extended to other entities, such as utility companies and professional highway design consultants contracted by a governmental entity, that have a role in the maintenance or design of highways. Accordingly, your Committee has amended this bill by:

- (1) Specifying that in cases where a public utility is a tortfeasor, the public utility shall only be liable for that percentage share of the damages attributable to the public utility;
- (2) Classifying professional consultants contracted by a government agency as a "government entity"; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1175, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1175, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Transportation,



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JOSEPH M. SOUKI, Chair



