

Honolulu, Hawaii

Feb 8, 2007

RE: H.B. No. 36  
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 Judiciary, to which was referred H.B. No. 36 entitled:

"A BILL FOR AN ACT RELATING TO COUNTIES,"

begs leave to report as follows:

The purpose of this bill is to allow state agencies to enter into indemnity agreements with the counties. The bill also requires state agencies to agree to indemnify a county when receiving from the county any assistance, services, rights, or permission to use county property or provide services or act as a vendor to county agencies, by:

- (1) Defending the county and its officers and employees from claims made by public users; and
- (2) Indemnifying the county and its officers and employees for losses incurred as a direct result of the public use.

The Mayor of the City and County of Honolulu, the Department of the Corporation Counsel of the City and County of Honolulu, the Maui County Council, the Hawaii County Council, the Mayor of the County of Hawaii, the Office of the Corporation Counsel of the County of Hawaii, a member of the Hawaii County Council, and a member of the Kauai County Council testified in support of this bill. The Attorney General opposed this measure.



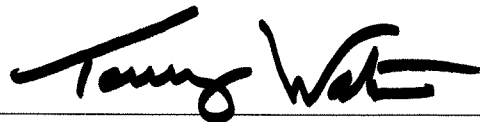
Your Committee has amended this bill by:

- (1) Authorizing, instead of requiring, a state agency to enter into written indemnity agreements with the counties to receive aid, assistance, support, benefits, service, or interest in or rights to use county property;
- (2) Limiting situations where the state agency may agree to an indemnity provision with the county agency to situations when:
  - (a) A county ordinance, rules, or regulations expressly or by clear implication require the indemnity provision;
  - (b) The governor approves the State's proposed indemnification;
  - (c) The comptroller 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; and
  - (d) The State's liability under the indemnity provision will be expressly limited to the amount of, and will be defrayed solely by, such insurance;
- (3) With exceptions for gross negligence or wanton acts or omissions, statutorily limiting the civil liability of a county providing aid, assistance, support, benefits, service, or interest in or rights to use county property to a state agency;
- (4) Authorizing the Comptroller to obtain loss insurance to indemnify a county under an indemnity agreement with a state agency;
- (5) Changing the effective date to January 1, 2050, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for style, clarity, and consistency.



As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 36, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 36, H.D. 1, and be referred to the Committee on Finance.

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



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TOMMY WATERS, Chair



