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**STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
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TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
JUDICIARY
ON
February 12, 2008

H.B. 921

RELATING TO RISK MANAGEMENT

Chair Waters and members of the Committee, thank you for the opportunity to testify on H.B. 921.

The Department of Accounting and General Services (DAGS) opposes H.B. 921 because it would be inconsistent with the changes passed last session through Act 152, SLH 2007. Act 152 amended Hawaii Revised Statutes (HRS) chapter 46 to add a new part, "Part V, Miscellaneous," that included a new section 46-71.5, "Indemnification of county agencies." Act 152 also amended HRS 41D-8.5, "Insurance for Indemnification," by adding a new subsection (2) that allows the Comptroller to obtain sufficient loss insurance to indemnify, defend, and hold harmless a county providing assistance, services, rights, or permission to use county property to a state agency under an indemnity agreement provision pursuant to HRS 41-71.5.

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H.B. 921 broadens the State's obligation to indemnify the counties by allowing the counties to unilaterally determine when a state agency is required to indemnify the respective county. This provision, in view of the fact that everything else in H.B. 921 already has been adopted and enacted in HRS sections 41D-8-5 and 46-71.5, undermines and circumvents the Comptroller's authority.

In addition, the State has an excess liability insurance policy, with a self-insured retention of \$4 million per occurrence, therefore, the bill's subsection 4, which limits the State's liability to the amount of, and defrayed solely by, insurance obtained pursuant to HRS section 41D-8.5, may cause confusion and create unnecessary delays and issues.

DAGS recommends that this bill be held.

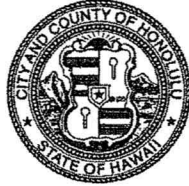
Thank you for the opportunity to testify on this matter.

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February 11, 2008

The Honorable Tommy Waters, Chair
The Honorable Blake K. Oshiro, Vice Chair
Committee on Judiciary
House of Representatives
Twenty-Fourth Legislature
State of Hawaii
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Waters, Vice Chair Oshiro and Committee Members:

Re: House Bill 921 Relating to Risk Management

The City and County of Honolulu ("City") opposes the adoption of House Bill 921 because the bill is duplicative and conflicts with Act 152, SLH 2007. House Bill 921 amends Chapter 41D, Hawaii Revised Statutes ("HRS") to allow state agencies to indemnify the counties in order to receive county aid, assistance, support, benefits, services, or interests in or the right to use county property.

House Bill 921 is duplicative because Act 152, which amended HRS Chapter 46, already empowers state agencies with discretionary authority to enter into indemnity agreements with the counties in order to receive county aid, assistance, support, benefits, services, and interests in or rights to use county property. Act 152 provides that an indemnity may be granted where: (1) the governor approves the proposed indemnification; and (2) the State comptroller obtains sufficient insurance to cover the liability or determines that it is in the State's best interest not to obtain insurance.

House Bill 921 seeks to impose two additional requirements that (1) a "county ordinance, rules, or regulations expressly or by clear implication require the indemnity provision" before the state agency may agree to an indemnity provision; and (2) the State's liability under the indemnity provision is limited to the amount of insurance obtained. However, these additional requirements were considered during the 2007 legislative session and were not included in the final language of Act 152.

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The Honorable Tommy Waters, Chair
The Honorable Blake S. Oshiro, Vice Chair
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The City objected to the insurance limitation because if the State comptroller chooses not to obtain insurance, the State's liability under the indemnity provision would be zero, thus defeating the purpose for the indemnification requirement.

The City also opposed the inclusion of the requirement that there be a county law requiring the indemnification as impractical and unnecessary. There are many instances when the City, as the landowner, requires the State to indemnify the City even when there is no City ordinance or rule requiring the indemnification. These situations occur when the State requests a right of entry to perform temporary construction work, field testing, surveying, etc. through City property. As a responsible landowner, the City has the duty to protect the interests of its taxpayers. Therefore, the City requires the State and its contractors to indemnify the City should an accident or injury occur during the State and/or contractor's occupancy.

House Bill 921 further seeks to amend HRS Section 41D-8.5. However, Act 152 amended HRS Section 41D-8.5 to include the same amendments proposed in House Bill 921.

Since the adoption of Act 152, the City and State Department of Education ("DOE") have mutually agreed to an indemnity provision which is included in the City's park permits whenever the DOE uses City park property for recreational sports-related and non-recreational activities. The City is currently working with the State Attorney General in evaluating the need for an indemnity agreement for other State activities held on City property.

If there is a legal requirement mandating amendment of HRS Chapter 41 to reflect the changes previously made to HRS Chapter 46, it is the City's position that the revisions to HRS Chapter 41 must reflect the same amendments to HRS Chapter 46 promulgated by Act 152.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,


CARRIE K. S. OKINAGA
Corporation Counsel

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