

STAND. COM. REP. NO. 47

Honolulu, Hawaii

Feb 6, 2009

RE: H.B. No. 1037

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred H.B. No. 1037 entitled:

"A BILL FOR AN ACT RELATING TO CIVIL 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:

- (1) Abolishing joint and several liability for government entities; and
- (2) 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 Department of the Corporation Council of the County of Maui testified in support of this bill. The Hawaii Association for Justice, American Council of Engineering Companies of Hawaii, American Public Works Association Hawaii Chapter, Hawaiian Electric Company, Hawaiian Electric Light Company, Maui Electric Company, Engineering Solutions, Inc., and Hawaii Telcom testified in opposition to this measure.



In 2006, the Hawaii Supreme Court ruled in Kienker v. Bauer, that the abolition of joint and several liabilities under 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 as expressed in both House and Senate Standing Committee Reports for Act 213, Session Laws of Hawaii 1994, because of the 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 the numerous legal questions in cases involving joint and several liability are beyond the purview of the Committee on Transportation and can be addressed more appropriately by the Committee on Judiciary. Your Committee also respectfully requests that the Committee on Judiciary examine the legal ramifications of extending the protection against joint and several liability afforded to government entities in this measure 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.

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. 1037 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

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

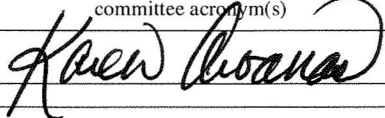


JOSEPH M. SOUKI, Chair



State of Hawaii
House of Representatives
The Twenty-fifth Legislature

Record of Votes of the Committee on Transportation

Bill/Resolution No.: HB 1037	Committee Referral: TRN, JUD, FIN	Date: 2/2/2009		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended (as is) <input type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
TRN Members	Ayes	Ayes (WR)	Nays	Excused
1. SOUKI, Joseph M. (C)	✓			
2. AWANA, Karen Leinani (VC)	✓			
3. AQUINO, Henry J.C.	✓			
4. HANOHANO, Faye P.		✓		
5. KEITH-AGARAN, Gilbert S.C.		✓		
6. LEE, Marilyn B.	✓			
7. NAKASHIMA, Mark M.		✓		
8. RHOADS, Karl		✓		
9. SAIKI, Scott K.			✓	
10. TAKUMI, Roy M.		✓		
11. YAMASHITA, Kyle T.	✓			
12. PINE, Kymberly Marcos	✓			
TOTAL (12)	6	5	1	
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>committee acronym(s)</small>				
Vice Chair's or designee's signature: 				
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