

STAND. COM. REP. NO. 920

Honolulu, Hawaii

MAR 25 2009

RE: H.B. No. 1163
H.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Transportation, International and Intergovernmental Affairs, to which was referred H.B. No. 1163, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO HARBORS,"

begs leave to report as follows:

The purpose of this measure is to allow the Department of Transportation to impose upon private parties using state harbors the duty to defend, hold harmless, and indemnify the State.

This measure also defines "state harbor property" as the commercial harbors, ports, roadsteads, harbor buildings, and other harbor facilities of the State, including docks, wharves, piers, quays, bulkheads, or landings therein.

Your Committee received testimony in support of this measure from the Department of Transportation.

Section 19-41-7, Hawaii Administrative Rules, imposes a duty upon users of harbor facilities to defend and indemnify the State against all claims arising from their operations on Department of Transportation property and their use of the Department's facilities, except where the Department was proven to be solely and legally negligent. However, the Hawaii Supreme Court, in *Haole v. State of Hawaii*, 111 Haw. 144 (2006), held that the Department lacked the statutory authority to adopt a rule imposing such a duty. This measure provides the Department of Transportation with the express authority to impose the duty by



rule, thus protecting the State from financial exposure in lawsuits filed against the State for injury caused to plaintiffs by the negligent acts of harbor facility users.

As affirmed by the record of votes of the members of your Committee on Transportation, International and Intergovernmental Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1163, H.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,
International and
Intergovernmental Affairs,

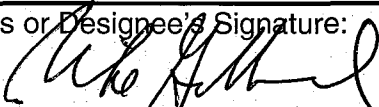


J. KALANI ENGLISH, Chair



The Senate
 Twenty-Fifth Legislature
 State of Hawaii

Record of Votes
Committee on Transportation, International and Intergovernmental Affairs
TIA

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1163, HD 2	TIA, J60	3-18-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
ENGLISH, J. Kalani (C)	✓			
GABBARD, Mike (VC)	✓			
ESPERO, Will	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	5			
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes