

STAND. COM. REP. NO. 245

Honolulu, Hawaii

Feb 13, 2009

RE: H.B. No. 1163

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. 1163 entitled:

"A BILL FOR AN ACT RELATING TO HARBORS,"

begs leave to report as follows:

The purpose of this bill is to protect the State from costly lawsuits filed by certain users of the State's commercial harbors by allowing the Department of Transportation (DOT) to adopt rules that would require certain private persons engaged in commercial activities that use or occupy the State's commercial harbors to defend, indemnify, and hold harmless the State, and any of its agencies, officers, and employees, against all claims that arise from the private person's use or occupation of the facility.

DOT testified in support of the bill. The Hawaii Harbors Users Group (HHUG) submitted comments and concerns.

Business and commercial use occurs at Hawaii's harbors statewide. During the normal course of business, individuals may be injured or property damaged, sometimes as a result of the inappropriate actions or negligence of a business, employees or individuals associated with a business, or individuals associated with a particular commercial activity occurring at a state harbor. While claims are filed against the businesses or individuals who acted negligently, claims have also been filed against the State as the landowner.

HB1163 HSCR TRN HMS 2009-2065



In an attempt to address this type of situation, DOT, to the extent possible, has imposed a duty on tenants and permittees to defend, indemnify, and hold harmless the State through provisions in lease agreements or revocable permits. However, there are some commercial activities and some permittees operating commercial activities at state harbor facilities that do not have, nor are required to have, because of the transient nature of their operation, lease agreements or revocable permits with DOT. To address these businesses and commercial activities, DOT promulgated Chapter 19-20.1, Hawaii Administrative Rules, to impose duties on these permittees and commercial activities to defend, indemnify, and hold the State harmless. Yet, these rules have been called into question by the Hawaii Supreme Court in William Haole v. State of Hawaii, 111 Haw. 144 (2006), where the court concluded that DOT's governing statutes did not explicitly or implicitly authorize DOT to promulgate rules to allow DOT to impose a duty to defend or indemnify the State upon private parties using state harbors.

Your Committee finds that this measure will address the need to provide DOT with explicit authority to impose the duty to defend, indemnify, and hold the State harmless on users of state commercial harbor facilities and thus reduce costly lawsuits against the State.

Your Committee also notes that discussions have taken place with regard to a possible amendment to this measure that would provide for a more equitable application of liability depending upon the degree of responsibility attributable to a party to the incident. Your Committee understands that DOT and HHUG will be working together to provide language for consideration by the Committee on Judiciary.

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. 1163 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



**Record of Votes of the Committee on Transportation**

Bill/Resolution No.: <b>HB 1163</b>	Committee Referral: <b>TRN, JUD, FIN</b>	Date: <b>2/11/09</b>		
<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				✓
<b>TOTAL (12)</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>2</b>
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: 				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office      Duplicate (Pink) – HMSO				