

STAND. COM. REP. NO.

918

Honolulu, Hawaii

MAR 25 2009

RE: H.B. No. 1168  
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. 1168, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO AIRPORTS,"

begs leave to report as follows:

The purpose of this measure is to clarify the authority of the Director of Transportation to adopt rules to require users or occupiers of airport land, buildings, or facilities for business or commercial purposes to defend, indemnify, and hold harmless the State against all claims, suits, and demands arising out of or resulting from the use or occupation.

Your Committee received testimony in support of this measure from the Department of Transportation. Written testimony presented to the Committee may be reviewed on the Legislature's website.

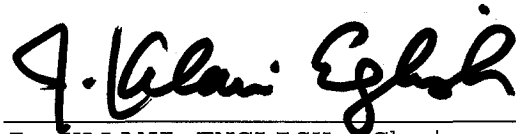
Your Committee finds that the Department of Transportation, to the extent possible, has required a duty on tenants and permittees to defend, indemnify, and hold harmless the State through lease agreements or revocable permits. However, there are other permittees who conduct commercial activities at airports facilities who do not have a lease agreement or a revocable permit. Although the Department of Transportation has adopted an administrative rule to impose on such permittees the duty to defend, indemnify, and hold harmless the State, the



Hawaii, 111 Haw. 144 (2006), Supreme court has held in the case of *Haole v. State of Hawaii* that the Department did not have statutory to adopt such an administrative rule. This measure remedies the situation by granting the Department express statutory authority to adopt such rules, thus providing appropriate protections to the State.

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. 1168, 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,



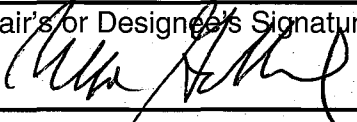
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J. KALANI ENGLISH, Chair



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 1168, HD2	TIA, JGO	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	✓			
<b>TOTAL</b>	5	—	—	—
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

\*Only one measure per Record of Votes