

**SB 1164**

LINDA LINGLE  
GOVERNOR



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March 3, 2009

The Honorable Donna Mercado Kim  
Chair, Senate Committee on Ways and Means  
State Capitol, Room 210  
415 South Beretania Street  
Honolulu, HI 96813

Re: S.B. No. 1164, S.D. 1, Relating to Interstate Compact  
on Educational Opportunity for Military Children  
Hearing: March 4, 2009, 9:30 a.m.

Dear Senator Kim:

The Department of Attorney General has concerns regarding  
S.B. No. 1164, S.D. 1, specifically Article XI(e) on page 24.

Article XI(e)(1) of the bill states:

The liability of the Interstate Commission's executive  
director and employees or Interstate Commission  
representatives, acting within the scope of such  
person's employment or duties for acts, errors, or  
omissions occurring within such person's state may not  
exceed the limits of liability set forth under the  
Constitution and laws of that state for state  
Officials, employees, and agents. The Interstate  
Commission is considered to be an instrumentality of  
the states for the purposes of any such action.  
[Emphasis added.]

The provision above may expose the State to liability in  
the event a lawsuit is filed against the Commission by virtue of  
the State being a member of the Interstate Compact on  
Educational Opportunity for Military Children ("Compact"). The  
bill does not contain any provisions that provide immunity to  
member states in the event a lawsuit is filed against the  
Commission or officials, employees or agents of the Commission.

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The bill, however, contains wording that holds representatives or employees harmless "[t]o the extent covered by the state". Article XI(e) (3) of the bill on page 25 states,

To the extent not covered by the state involved, a member state, the interstate commission, or the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.

By including such wording in the bill, there is an implication that the member states would not only be exposed to liability but also may be required to pay for any settlement or judgment that arose from the actions of the Interstate Commission employees and representatives. Other than the provision in the bill that states that each member state shall have one voting representative in the commission (Article IX (a)), the bill does not contain wording indicating that the member states themselves would have any direct control over the employees or representatives of the commission. It would appear imprudent to be exposed to liability for an entity in which the State does not have full or direct control over.

In addition, the wording contained in Article XI(e) is inconsistent with the wording contained in the subsections within that section. The prefatory language in Article XI(e) provides immunity for the executive director and employees of the Interstate Commission for acts, errors, or omissions that occurred within the scope of interstate commission employment, duties, or responsibilities. However, the subsections within Article XI(e) contain wording that limits the liability for the Interstate Commission's executive director, employees, and representatives for acts, errors, or omissions that occurred within the scope of their interstate commission employment, duties, and responsibilities.

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For the foregoing reasons, we recommend that the bill be amended to: (1) include wording that provides complete immunity to member states for lawsuits or other actions of the commission employees, representatives, or agents, and (2) delete subsections (1)-(3) of Article XI(e).

Sincerely,



for Joanna B.K.F. Yeh  
Deputy Attorney General

APPROVED:



Lisa M. Ginoza  
First Deputy Attorney General

c: The Honorable Shan Tsutsui, Vice Chair,  
Senate Committee on Ways and Means