

STAND. COM. REP. NO.

98

Honolulu, Hawaii

Feb 9, 2009

RE: H.B. No. 1168

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. 1168 entitled:

"A BILL FOR AN ACT RELATING TO AIRPORTS,"

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 airports by allowing the Department of Transportation (DOT) to adopt rules that would require certain private persons engaged in commercial activities that use the State's commercial airports to defend, hold harmless, and indemnify the State, and any of its agencies, officers, and employees, against all claims that arise from the use of the facility.

DOT testified in support of the bill.

Business and commercial use occurs at Hawaii's airports 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. While claims are filed against the businesses or individuals who acted negligently, claims have also been filed against the State as the landowner.

In an attempt to address this type of situation, DOT, to the extent possible, has required a duty on tenants and permittees to defend, indemnify, and hold harmless the State through lease

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agreements or revocable permits. However, there are some commercial activities and some permittees operating commercial activities at state airport facilities that do not have 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)) in which 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 duties on users of state airport facilities and thus reduce costly lawsuits against the State.

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. 1168 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

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Record of Votes of the Committee on Transportation

Bill/Resolution No.: HB1168	Committee Referral: TRN, JUD, FIN	Date: 2/4/2009		
<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)	11			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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