

Date: 03/25/2010

Committee: House Finance

Department: Education

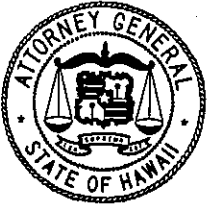
Person Testifying: Kathryn Matayoshi, Interim Superintendent of Education

Title of Bill: SB 2116, SD2, HD1 (HSCR 843-10) RELATING TO INDEMNIFICATION OF COUNTY AGENCIES

Purpose of Bill: Authorizes the superintendent of education the authority to agree to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees, under certain circumstances, when the use of county property will be for a school purpose or function. (HD1)

Department's Position: The Department of Education supports S.B. 2116 SD2 HD1 which streamlines the process for public schools to use county parks and other facilities for school purposes. The language added in the HD1 gives the Superintendent or Deputy Superintendent the authority to agree to indemnify a county once the Governor approves indemnity provisions for the school year. Passage of this bill will make it easier for schools to use county-owned space and facilities for special school events. It will also assist schools that must use adjacent county parks for their playgrounds and other physical education facilities.

Thank you for this opportunity to offer testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2116, S.D. 2, H.D. 1, RELATING TO INDEMNIFICATION OF COUNTY AGENCIES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 25, 2010 **TIME:** 12:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Jerrold G.H. Yashiro, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General opposes this bill in its present form, but would support it with the amendments recommended below.

The stated purpose of this bill is to facilitate the process by which the Department of Education obtains approval for the State to indemnify, defend, and hold harmless a county agency and its officers, agents, and employees for public school purposes and functions on or in county facilities.

As presently written, the bill allows the Governor to delegate the authority to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees to the Superintendent of Education or the Deputy Superintendent, but apparently only provides the Governor one opportunity to approve one blanket indemnity provision to be applied in all circumstances for public school purposes and functions. The bill should allow the Governor the discretion to determine the types of school purposes or functions the State will accept responsibility and liability for. The Governor should also have the discretion to determine if differing indemnity provisions can and should be used depending on the school purpose or

function. Obviously, different activities and functions could pose greater risk, and therefore potential exposure to the State. The Department of Education (DOE) is a large part of the State and any responsibility and/or liability as a result of indemnifying the counties for use of their facilities would remain the responsibility and liability of the State not the DOE. Thus, the Governor must have discretion to determine when and under what circumstances it may be appropriate to delegate the authority to the Superintendent to indemnify the counties and accept responsibility and liability for the State as a whole.

In light of the above, we recommend that the subsection (b) to be added to section 46-71.5, Hawaii Revised Statutes, by section 2 of this bill, be amended to read as follows:

"(b) Notwithstanding subsection (a), the governor may delegate to the superintendent of education or the deputy superintendent if so designated by the superintendent of education the authority to agree to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

- (1) The use of the county property will be for a public school purpose or a public school function;
- (2) The governor approves, in writing, the indemnity provision to be used by the superintendent of education or the deputy superintendent if so designated by the superintendent of education which provision, upon approval, may serve as approval under this paragraph for some or all public school purposes or functions on county

properties for the remainder of that same school year; and

- (3) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance."