

SB 2076

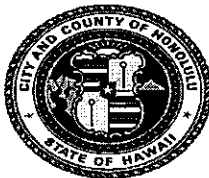
RELATING TO COUNTIES

Description:

Permits counties to pass ordinances that require written notification of defects or obstructions on certain county properties as a prerequisite to filing a claim against the counties for injuries or damages arising from against the alleged unsafe or dangerous condition of county property.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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**TESTIMONY OF THE OFFICE OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU**

On the following matter: **S.B. 2076 RELATING TO COUNTIES**

BEFORE THE:

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND
MILITARY AFFAIRS

DATE: Thursday, January 26, 2012 **TIME:** 2:50 p.m.

LOCATION: State Capitol, Room 224

TESTIFIERS: MATTHEW S.K. PYUN, Deputy Corporation Counsel, or
JOHN P. MORAN, Deputy Corporation Counsel

Chairman Espero and Members of the Committee:

The Office of the Corporation Counsel of the City and County of Honolulu strongly supports this Bill which seeks to provide the counties with the power to enact ordinances requiring that the county have actual notice of defects and/or dangerous conditions before an injured party can hold the county responsible for negligence.

The City of Honolulu provides residents and visitors roads, sidewalks, beaches, parks, entertainment and recreational areas and many other facilities for their use and enjoyment. The City considers the safety of the users of these facilities to be of primary importance and the City has attempted to be proactive in its approach to discover and repair defects and conditions that could result in injury to the public. However, due to budget cuts and the absence of workers to conduct the necessary inspections, the City has been forced to be reactive in dealing with the discovery of defects or dangerous conditions. The practical effect of the proposed legislation would be to allow counties the opportunity to introduce ordinances to make the

general public a partner in the discovery and reporting of potentially dangerous conditions.

This is not a new approach to the problem as similar legislation exists in municipalities in New York, Texas, Rhode Island, Maryland, Pennsylvania, Minnesota, Michigan, Montana, Nebraska and Oregon.

If the counties should pass such an ordinance, the right to sue for injuries sustained as the result of the negligence of the City regarding a dangerous condition of which the City was aware is not taken away. If a person is injured because of a condition that the City had notice of pursuant to the proposed legislation, the City could still be held responsible through litigation.

Again, this Bill will allow the counties to enact appropriate ordinances through the counties' normal deliberative process.

Thank you Mr. Chairman and Members of this Committee.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2076

January 26, 2012

To: Chairman Will Espero and Members of the Senate Committee on Public Safety, Government Operations, and Military Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 2076, relating to counties.

S.B. No. 2076 grants counties immunity from liability for injuries and damages caused by the failure of a county to repair or correct hazards it knows or should know require attention, unless a citizen first reports the hazardous condition to the county. This measure would allow counties to stop all preventive maintenance and inspections because they would only need to correct hazards that are reported by citizens. This conflicts squarely with the legal obligation of all landowners to exercise reasonable care to inspect and maintain their property for people reasonably expected to be on the property and improperly places the welfare of citizens at the random chance that another citizen will report hazardous conditions to the county.

This is bad public policy because providing safe public streets, sidewalks, parks and playgrounds are core government services. The public welfare depends on government to employ reasonable diligence in the inspection and maintenance of public facilities. It is government's duty, not private citizens' duty to inspect and maintain our streets, sidewalks, parks and playgrounds. This is bad public policy because this will

only encourage counties to forego and delay regular preventive maintenance that will no longer be required.

The concept that citizens should now have the responsibility to report hazardous conditions to counties is further flawed because citizens often lack the expertise or access to discover dangerous conditions. For example, Honolulu employs dozens of engineers in connection with the building and maintenance of its streets. These engineers have the expertise to know when and what preventive maintenance is needed to keep streets, traffic signals, signs and sidewalks reasonably safe. Ordinary citizens do not have this expertise. By the time citizens discover a major problem, it may already be too late to avoid unnecessary danger to the public. In the case of bridges, ordinary citizens may have no access to inspect the structural components of a bridge (what citizen would do that anyway?) so that the first notice to citizens could be the collapse of the bridge. This is certainly not in the public interest and bad public policy. County engineers know the design requirements of bridges and should implement adequate inspection and maintenance schedules. This measure would allow counties to cease all inspection and maintenance unless they receive a complaint.

This bill would give unequal rights to injured citizens. If two children are injured by defective playground equipment, one might recover if a Good Samaritan citizen happened to report the defect; while the other child would be left out in the cold if no earlier report was made. Furthermore, the rights of citizens are dependant on counties keeping accurate records of complaints. The fact they are immune from liability if there are no prior complaints only serves as an incentive for them not to keep accurate records.

No system of liability should permit the person who may be liable to serve as the gatekeeper for their own liability. It is a blatant conflict of interest.

It is apparent to everyone that the county has ignored and deferred maintenance of essential public facilities for too long now. The solution is not to give the county immunity and thereby encourage further neglect, but is to make it clear that the county must return its focus on essential services and get going on needed repairs to our streets, sidewalks, parks and playgrounds.

Thank you very much for allowing me to testify in OPPOSITION to this measure. Please feel free to contact me should you have any questions or desire additional information.