
A BILL FOR AN ACT

RELATING TO COUNTY FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that partnerships between
2 the State and the counties to utilize government facilities for
3 public purposes increase the efficiency and efficacy of
4 government services. However, the legislature also finds that
5 the current process for requesting approval for indemnification
6 of a county by the State for the use of county facilities is
7 inherently flawed and implicates the autonomy of the legislature
8 in its performance of official legislative functions for public
9 service and for public purposes.

10 Pursuant to section 46-71.5, Hawaii Revised Statutes,
11 before a county may receive aid, assistance, support, benefits,
12 services, and interests in or rights for the State's use of
13 county property, a request must be made in writing seeking
14 approval of indemnification protection by the State. Further,
15 the written request for indemnification may be granted only
16 after certain stringent preconditions are satisfied. As a
17 starting point, it is common practice for a legislator to



1 certify in writing that the site is satisfactory for its
2 intended use and that there is no significant risk or liability.
3 Next, the request for use and indemnification is reviewed by the
4 attorney general and accompanied by a recommendation for
5 approval or denial. After that review, it is statutorily
6 mandated that both the comptroller and the governor review and
7 approve the request before indemnification is granted. Only
8 after this time-consuming process, and subject to the approval
9 of both the comptroller and governor, may the county facility or
10 service be made available for the requested use.

11 The legislature further finds that this process for
12 indemnification for use of county facilities impinges upon the
13 legislature's ability to freely conduct official legislative
14 business. The legislature thus declares that by and through the
15 application of section 46-71.5, Hawaii Revised Statutes, the
16 bright line that clearly establishes the independence of the
17 three branches of government is blurred. In light of this, the
18 legislature is concerned with the potential conflicts and
19 obstacles presented in the current indemnification process.
20 More specifically, the legislature asserts that it should not be
21 required to seek the permission of the comptroller and governor



1 in order to perform official duties for the public in county
2 facilities. The legislature should be entitled to
3 indemnification at the outset.

4 Accordingly, the purpose of this Act is to expressly
5 require that counties be indemnified for the use of county
6 facilities or services in the course of official legislative
7 duties for a public purpose.

8 SECTION 2. Section 46-71.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§46-71.5 Indemnification of county agencies. (a) To
11 receive county aid, assistance, support, benefits, services, and
12 interests in or rights to use county property, a state agency
13 may agree in writing to an indemnity provision by which the
14 State agrees to indemnify, defend, and hold harmless a county
15 agency, its officers, agents, and employees when:

- 16 (1) The governor approves the State's proposed
17 indemnification; and
- 18 (2) The comptroller, pursuant to section 41D-8.5, has
19 obtained an insurance policy or policies in an amount
20 sufficient to cover the liability of the State that
21 reasonably may be anticipated to arise under the



1 indemnity provision, or has determined that it is not
2 in the best interest of the State to obtain insurance.

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

- 9 (1) The use of the county property will be for a public
10 school purpose or a public school function;
- 11 (2) The governor approves, in writing, the indemnity
12 provision to be used by the superintendent of
13 education or the deputy superintendent if so
14 designated by the superintendent of education which
15 provision, upon approval, may serve as approval under
16 this paragraph for all public school purposes or
17 functions on county properties for the remainder of
18 that same school year; and
- 19 (3) The comptroller, pursuant to section 41D-8.5, has
20 obtained an insurance policy or policies in an amount
21 sufficient to cover the liability of the State that



1 reasonably may be anticipated to arise under the
2 indemnity provision, or has determined that it is not
3 in the best interest of the State to obtain insurance.

4 (c) An indemnity provision not in strict compliance with
5 this section shall not give rise to a claim against the State
6 under chapter 661 or otherwise waive the State's sovereign
7 immunity.

8 (d) Notwithstanding subsection (a) or any other law to the
9 contrary, the State shall indemnify, defend, and hold harmless a
10 county agency, its officers, agents, and employees when the
11 legislative branch of the State uses county property in the
12 course of legislative duties and for a public purpose, including
13 but not limited to holding public meetings, and has executed an
14 indemnity agreement with the applicable county; provided that
15 the legislative branch shall provide a written copy of the
16 indemnity agreement to the comptroller no fewer than ten days
17 prior to the legislative branch's use of the county property.
18 The comptroller, pursuant to section 41D-8.5, may obtain an
19 insurance policy or policies in an amount sufficient to cover
20 the liability of the State that reasonably may be anticipated to



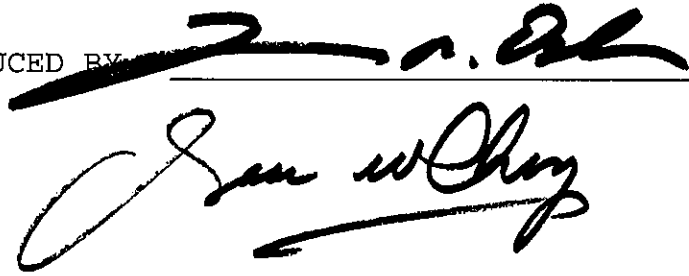
1 arise under the indemnity agreement or may determine that it is
2 not in the best interest of the State to obtain insurance."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 2016.

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INTRODUCED BY



JAN 21 2016



H.B. NO. 1678

Report Title:

County Property; Use by the Legislative Branch; Indemnification

Description:

Requires the State to indemnify a county for the use of county property by the legislative branch for legislative duties and a public purpose.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

