

JAN 25 2017

A BILL FOR AN ACT

RELATING TO GOVERNMENT TORT LIABILITY.

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

1 SECTION 1. The purpose of this Act is to amend
2 section 663-10.5, Hawaii Revised Statutes, to abolish joint and
3 several liability for government entities in all cases under
4 chapter 663, Hawaii Revised Statutes, so that government
5 entities would only be liable for the percentage share of the
6 damages actually attributable to the government entities.

7 SECTION 2. Section 663-10.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§663-10.5 Government entity as a tortfeasor; abolition of**
10 **joint and several liability.** Any other law to the contrary
11 notwithstanding, including but not limited to sections 663-10.9,
12 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where
13 a government entity is determined to be a tortfeasor along with
14 one or more other tortfeasors, the government entity shall be
15 liable for no more than that percentage share of the damages
16 attributable to the government entity[+ ~~provided that joint and~~
17 ~~several liability shall be retained for tort claims relating to~~

S.B. NO. 890

1 ~~the maintenance and design of highways pursuant to section 663-~~
2 ~~10.9].~~

3 For purposes of this section, "government entity" means any
4 unit of government in this State, including the State and any
5 county or combination of counties, department, agency,
6 institution, board, commission, district, council, bureau,
7 office, governing authority, or other instrumentality of state
8 or county government, or corporation or other establishment
9 owned, operated, or managed by or on behalf of this State or any
10 county.

11 For purposes of this section, the liability of a government
12 entity shall include its vicarious liability for the acts or
13 omissions of its officers and employees."

14 SECTION 3. If any provision of this Act, or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 5. This Act shall take effect upon its approval.

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S.B. NO. 890

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INTRODUCED BY: *Ann H. VA-*

BY REQUEST

Report Title:

Government Tort Liability

Description:

Clarifies that government entities are only liable in certain cases for the percentage share of the damages they actually caused.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO GOVERNMENT TORT LIABILITY.

PURPOSE: To amend section 663-10.5, Hawaii Revised Statutes, to abolish joint and several liability for government entities in all cases under chapter 663, Hawaii Revised Statutes, by eliminating the retention of joint and several liability for tort claims against government entities relating to the maintenance and design of highways pursuant to section 663-10.9, Hawaii Revised Statutes, making government entities only responsible for their proportionate share of damages in all cases.

MEANS: Amend section 663-10.5, Hawaii Revised Statutes.

JUSTIFICATION: Section 663-10.5 was intended to protect the public fisc by preventing government entities from being held jointly and severally liable for the entire damages in cases in which the government entities bore minimal responsibility in causing those damages. Section 663-10.5 abolished joint and several liability for government entities and provided that government entities would be liable for no more than that percentage share of the damages attributable to the government entities. In 2006, this statute was amended to retain joint and several liability for government entities for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9.

This exception would be an unfair burden to the State's taxpayers and goes against

the original intent of section 663-10.5, which was to "ensure fairness and equity for government entities who, because of their 'deep pockets' may be otherwise required to pay more than their fair share when determined to be a joint tortfeasor." Conf. Comm. Rep. No. 48 on H.B. No. 1088, 1994 Regular Session.

Impact on the public: This bill will ensure that the State and its taxpayers are not overburdened with paying excessive damages for highway-related injuries where the majority of fault is with another tortfeasor and the State has minimal responsibility.

Impact on the department and other agencies: This bill will protect the general fund from excessive judgments for tort claims against the State, including those relating to highway maintenance and design, by making the State responsible only for its proportionate share of damages when the State has minimal responsibility.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.