



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Judiciary  
February 15, 2018 at 2:00 p.m.

By  
Jan Gouveia  
Vice President for Administration  
University of Hawai'i

### HB 2299 HD1 – RELATING TO INDEMNIFICATION OF COUNTY AGENCIES

Chair Nishimoto, Vice Chair San Buenaventura, and members of the committee:

Thank you for the opportunity to present testimony in support of HB 2299 HD1 – Relating to Indemnification of County Agencies.

HB 2299 HD1 seeks to authorize the Board of Regents of the University of Hawai'i, or its designee, to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when the University uses county property for a University purpose or a University function, when certain conditions are met. Currently, the law only authorizes the Governor to approve such indemnification. However, consistent with the University's autonomy, this measure seeks to allow the University to enter into such provisions on its behalf.

Based on the testimony and committee reports on SB 1603 (Act 152, SLH 2007), the historical reasons for enacting the original language of HRS § 46-71.5(a) to indemnify county agencies are undocumented. In 2010, Act 145, SLH 2010 (SB 2116) was signed into law that allowed the Governor to delegate the authority to indemnify a county agency to the superintendent of education where (1) the use of the county property will be for a public school purpose or function; (2) the Governor approves, in writing, the indemnity provision to be used, which may, upon approval, serve as approval for the remainder of the same school year; and (3) the Comptroller has obtained an sufficient insurance policy or has determined that obtaining insurance is not in the State's best interest, as set forth in HRS § 46-71.5(b). The legislative history indicates that the statute was amended due to a finding that the measure would streamline an approval process that the Department of Education was required to complete several times every year for the same activities and that the requirement that the schools obtain the consent from the Governor for such purposes was unnecessarily burdensome, especially for school purposes and functions that occur repeatedly throughout the school year.

The University is seeking a similar amendment as the Department of Education to streamline an approval process that is unnecessarily burdensome and time consuming.

In 2016 and 2017, the University processed approximately 50 requests each year.

Each request requires 7-9 signatures, including the Hawai'i Governor, Hawai'i Attorney General, Hawai'i Comptroller, UH Vice President for Legal Affairs, UH Vice President for Administration, and the UH Chancellor. It also routes to at least 2 additional offices not identified by signatures. None of this is done electronically. On average, the entire process takes 1-2 months. A copy of a typical memorandum is attached hereto as Exhibit A.

As a semi-autonomous agency, the University of Hawai'i has its own risk management program that finances its liabilities through a combination of self-insurance and commercial insurance. Since 2003, the University has self-funded all of its judgements and settlements; they are not presented to the Legislature for funding as part of the State's annual "Claims Bill." As such, this measure seeks to authorize the Board of Regents of the University of Hawai'i, or its designee, to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when the University uses county property for a University purpose or a University function, when certain conditions are met, on its own behalf. If approved, the University will no longer need to engage in the lengthy approval process to support day-to-day operational transactions of the University, for which it already assumes financial responsibility for.

Based on the foregoing, the University strongly supports HB 2299 HD1.





LEEWARD COMMUNITY COLLEGE

January 2, 2018

MEMORANDUM

TO: The Honorable David Y. Ige
Governor
State of Hawai'i

The Honorable Roderick K. Becker
Comptroller
State of Hawai'i

[Handwritten signature of Roderick K. Becker]

The Honorable Douglas S. Chin
Attorney General
State of Hawai'i

[Handwritten signature of Douglas S. Chin]

VIA: Carrie K.S. Okinaga
Vice President for Legal Affairs and University General Counsel

[Handwritten signature of Carrie K.S. Okinaga]

VIA: Jan S. Gouveia
Vice President for Administration

[Handwritten signature of Jan S. Gouveia]

VIA: Manuel Cabral
Chancellor, University of Hawai'i Leeward Community College

[Handwritten signature of Manuel Cabral]

VIA: Della Teraoka
Vice Chancellor for Academic Affairs
University of Hawai'i Leeward Community College

[Handwritten signature of Della Teraoka]

VIA: James Goodman
Dean, Arts and Sciences
University of Hawai'i, Leeward Community College

[Handwritten signature of James Goodman]

FROM: Jennie Thompson
Chair, Department of Mathematics & Natural Sciences
University of Hawai'i, Leeward Community College

[Handwritten signature of Jennie Thompson]

SUBJECT: REQUEST TO APPROVE INDEMNIFICATION OF CITY AND COUNTY OF HONOLULU UNDER HRS §46-71.5 FOR THE USE OF HO'OMALUHIA BOTANICAL GARDEN

Pursuant to Hawai'i Revised Statutes § 46-71.5, we respectfully request your approval of an indemnification to allow the University of Hawai'i for the benefit of Leeward Community College, Department of Mathematics & Natural Sciences to utilize Ho'omaluhia Botanical Garden, to conduct a field trip for BOT 130 on February 20 & 23, 2018 from 9:00 a.m. to 11:00 a.m.

Under HRS §46-71.5, the State may agree to indemnify, defend, and hold harmless a county agency if certain preconditions are satisfied: 1) the Governor approves the State's proposed indemnification; and 2) the Comptroller, pursuant to Section 41D-8.5 HRS, has (a) obtained an insurance policy in an amount sufficient to cover reasonably anticipated liability of the State that may arise or (b) determined that obtaining such a policy is not in the best interest of the State.

A. Indemnity Protection to be Provided

The State shall indemnify, defend, and hold harmless the City, its officers, employees and agents, from any and all claims of liability for any damage to real or personal property or injury to or death of any persons when such damage, injury or death arises out of the action or omission of the State, its officers, employees, agents, consultants, contractors, or invitees; provided that the State shall not be required to indemnify, defend, or hold harmless the City, its officers, employees, agents, from any claims of liability for any damages to real or personal property or injury to or death of any persons, when such damage, injury or death arises out of the action or omission of the City, and/or its officers, employees, agents, consultants, contractors, or invitees, regarding the maintenance and repair of the Park. This provision shall not be read or interpreted to create any liability of the State of any person or entity to any person or entity, except for the duties to indemnify, defend, and hold harmless set forth herein. This provision is not intended to and shall not be interpreted to benefit any third person, or to benefit or create any third-party beneficiary.

B. Inspection

For the purposes of this request, Leeward Community College, Department of Mathematics & Natural Sciences has inspected the site it will be utilizing within Ho'omaluhia Botanical Garden and has determined that the site is satisfactory for its intended use. Further, Leeward Community College, Department of Mathematics & Natural Sciences believes there is no significant risk or liability to the University to use the facility as indicated in our request.

C. Conclusion

Because of the benefits to the University and its employees, we respectfully request your approval of the foregoing indemnity protection for the City and County of Honolulu so we may proceed with use of the facility as stated above.

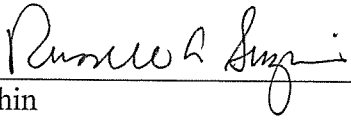
Should you have any questions, please contact the University of Hawai'i Risk Management Office at 956-7243.

96-045 Ala Ike  
Pearl City, Hawaii 96782  
Phone: (808) 455-0251  
Fax: (808) 455-0559

D. Attorney General Review

The Attorney General has reviewed and approved the proposed request for the above mentioned dates.


**Attorney General's Recommendation for Approval:**

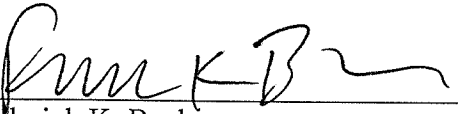
  
\_\_\_\_\_  
Douglas S. Chin  
✓ Attorney General, State of Hawai'i

1-17-18  
Date

**Comptroller Review and Approval:**

\_\_\_\_\_ Pursuant to HRS §41D-8.5, the Comptroller 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 set forth in this memorandum.

 \_\_\_\_\_ The Comptroller has determined that it is not in the best interest of the State to obtain insurance for the indemnity set forth herein and approves the indemnity without further need of insurance.

  
\_\_\_\_\_  
Roderick K. Becker  
Comptroller, State of Hawai'i

1/18/18  
Date

**Governor's Approval:**

  
\_\_\_\_\_  
David Y. Ige  
Governor of the State of Hawai'i

JAN 22 2018  
Date