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IN REPLY REFER TO:

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TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

COMMITTEE ON JUDICIARY

HOUSE BILL NO. 1168, RELATING TO AIRPORTS.

The Department of Transportation (DOT) **strongly supports** this bill.

This Administration Measure was prompted by the decision in William Haole v. State of Hawaii, 111 Haw. 144 (2006). In that case, the Hawaii Supreme Court concluded that the DOT's governing statutes do not explicitly or implicitly authorize the DOT to promulgate Administrative Rules to allow the DOT to impose upon private parties using State harbor facilities a duty to defend or indemnify the State.

Businesses and commercial users of state airport facilities should be held responsible for the operation and conduct of their businesses, their employees, and agents. When businesses act negligently and, as a result, personal injury or property damage occur; these businesses (and not the State as the landowner) should be held financially responsible. To the extent possible, the DOT has required a duty on tenants and permittees to defend, indemnify, and hold harmless the State through lease agreements or revocable permits. However, there are other permittees who conduct commercial activities at our airports facilities but who do not have a lease agreement or a revocable permit. The DOT promulgated Chapter 19-20.1, Hawaii Administrative Rules, to impose on such permittees the duty to defend, indemnify, and hold the State harmless. However, the ruling by the Hawaii Supreme Court in the case cited above has made the DOT's authority to have promulgated such an Administrative Rule, questionable. Rather than wait until this Administrative Rule is challenged in Court (as in the Haole case), the DOT is taking a proactive approach by proposing this Administrative Measure to expressly provide the DOT with the statutory authority to impose these duties on users of our State airport facilities. If enacted, this bill will effectively reduce the number of costly lawsuits against the State.

The DOT is also proposing a similar Administrative Measure to expressly provide the DOT with the statutory authority to promulgate an Administrative Rule to impose these duties on users of our State harbor facilities. (House Bill No. 1163, Relating to Harbors.)