

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

H.B. NO. 1851, RELATING TO INDEMNIFICATION OF COUNTY AGENCIES.

BEFORE THE:

HOUSE COMMITTEE ON EDUCATION

DATE: Wednesday, January 27, 2010 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Lisa M. Ginoza, First Deputy Attorney General, or
Holly T. Shikada, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General supports the intent of this bill and provides the following comments and suggestions.

The purpose, as stated in the bill, is to facilitate the process by which the Department of Education obtains approval for the State to indemnify, defend, and hold harmless a county agency and its officers, agents, and employees for public school purposes and functions on or in county facilities.

As drafted, it is unclear whether the language will achieve the stated purpose. While the Department of the Attorney General supports the intent to streamline the approval process for the Department of Education, streamlining the process must be balanced against ensuring that the State is not exposing itself to greater liability than necessary whenever it indemnifies a county agency and its officers, agents, and employees for use of county facilities.

Allowing the Governor the discretion to delegate the authority to the Superintendent or Deputy Superintendent for school functions or purposes using an indemnity provision

approved by the Governor will streamline the approval process while ensuring some balance over the breadth of the indemnification. In light of the above, we recommend that subsection (b), beginning on line 15 of page 2 through line 4 on page 3 be amended to read as follows:

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

- (1) The use of the county property will be for a school purpose or a school function;
- (2) The governor approves, in writing, the indemnity provision to be used by the superintendent of education or the deputy superintendent if so designated by the superintendent which, upon approval, may to the extent permitted by the Governor, serve as approval under this paragraph for some or all public school purposes or functions on county properties for the remainder of that same school year; and
- (3) The comptroller, pursuant to section 41D-8.5, 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, or has determined that it is not in the best interest of the State to obtain insurance."

We respectfully ask the Committees to pass this bill with the recommended amendments.

Date: 01/27/2010

Committee: House Education

Department: Education

Person Testifying: Kathryn Matayoshi, Interim Superintendent of Education

Title of Bill: HB 1851 RELATING TO INDEMNIFICATION OF COUNTY AGENCIES.

Purpose of Bill: Facilitates the process by which the department of education obtains approval for the State to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees for public school purposes and functions on county facilities.

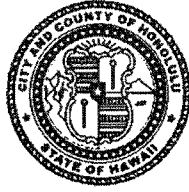
Department's Position: The Department of Education supports the intent of H.B. 1851 which would simplify and make consistent the process by which public schools are able to use county parks and other facilities for school purposes. There are a number of schools which were designed to use adjacent county parks for their playgrounds and other physical education facilities. A process that can ease the continued use of county property would be helpful to the schools.

Thank you for this opportunity to offer testimony.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



CARRIE K. S. OKINAGA
CORPORATION COUNSEL

DONNA M. WOO
FIRST DEPUTY CORPORATION COUNSEL

January 26, 2010

The Honorable Roy M. Takumi, Chair,
and Members of the Committee on
Education
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Takumi and Members:

Subject: House Bill No. 1851
Relating to Indemnification of County Agencies

The City and County of Honolulu ("City") supports H.B. No. 1851 which seeks to facilitate the process by which the Department of Education obtains approval for the State to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees for public school purposes and functions on county facilities as provided by Act 152, SLH 2007.

The process currently used by State agencies to obtain the Governor's approval has been in place since 2007. Although the City has not had any insurmountable problems with the current process employed by the State, the City supports legislation to streamline the process. The City continues to work with the State agencies, including the Department of Education, to facilitate the issuance of permits and agreements incorporating the indemnification provisions as approved by the Governor.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

A handwritten signature in cursive script, reading "Carrie K. S. Okinaga".

CARRIE K. S. OKINAGA
Corporation Counsel

CKSO:ey

HB 1851 - Relating to the indemnification of County Agencies

EDN - Wednesday, 01-27-10 2:00 pm in House conference room 309

IN SUPPORT

Please support and pass HB 1851 relating to the indemnification of County Agencies. This bill is needed to ensure that Hawai'i's public school children are able to utilize County parks and facilities. The current process is extremely burdensome and time consuming and limits the DOE's ability to use County facilities. This bill will expedite the approval process and ensure that DOE students are able to utilize County facilities.


Jennifer Barra
Kailua