

**SB 1613**



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 11, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION  
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS

SENATE BILL NO. 1613

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

This bill will provide the DOT with the expressed authority to impose upon private parties who use state airport and harbor facilities and services, the duty to defend, indemnify and hold harmless the State against claims that arise from such use.

Section 19-41-7, Hawaii Administrative Rules, imposed a duty upon users of harbor facilities to defend and indemnify the State against all claims arising from such activities, except where the State was proven to be solely and legally negligent. However, the Hawaii Supreme Court decision in Haole v. State of Hawaii, 111 Haw. 144 (2006), rendered Section 19-41-7 unenforceable. The Court ruled, in pertinent part, that:

“DOT’s governing statutes do not explicitly or implicitly authorize the DOT to issue administrative rules exonerating the State from the negligence of its employees (i.e., they do not allow the DOT to impose upon private parties a duty to defend or indemnify the State).”

As a result of the Haole decision, the State, as the landowner, has and will continue to bear considerable financial exposure in costly lawsuits filed against the State.

The DOT also promulgated Chapter 19-20.1, Hawaii Administrative Rules. That administrative rule imposed a similar duty on users of airport facilities to defend, indemnify and hold the State harmless. Accordingly, the State is open to similar financial exposure from private parties using the airport facilities and services in a negligent manner.

This bill will provide the DOT with the expressed authority to impose, via the Hawaii Administrative Rules, a duty to defend, hold harmless and indemnify the State. Users of state airport and harbor facilities and services should be held responsible for the safe operation and conduct of their businesses, their employees, and agents. While the duty to defend, hold harmless and indemnify is already imposed upon tenants under lease or written agreements, other

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commercial activities take place within our airports and harbors for which written agreements are impracticable and/or do not exist. For example, because tariffs presently control the fees charged to most users of commercial harbor facilities and services, written agreements are not executed by all users as a matter of custom and practice. This measure will provide protection to the State in situations where such historical uses are not covered by a written agreement.

Accordingly, we ask for your favorable consideration of this bill.

**SB1613  
RELATING TO THE DEPARTMENT OF TRANSPORTATION**

**GARY NORTH  
CHAIRMAN  
HAWAII HARBORS USERS GROUP**

**FEBRUARY 11, 2009**

Vic Angoco  
Matson Navigation Company,  
Inc.

Mar Labrador  
Horizon-Lines, LLC

Glenn Hong  
Young Brothers, Ltd./Hawaiian  
Tug and Barge

Grant Karamatsu  
NCL America, Inc.

Douglas Won  
Sause Bros., Inc.

Richard Maxwell  
Aloha Cargo Transport,  
Division of Northland Services,  
Inc.

Robert T. Guard  
McCabe, Hamilton & Renny Co.,  
Ltd.

Jeff Brennan  
Hawaii Stevedores, Inc.

John Garibaldi  
Hawaii Superferry, Inc.

Lance Tanaka  
Tesoro Hawaii Corporation

Stephanie Ackerman  
The Gas Company

Eric Yoshizawa  
Ameron Hawaii

Nate Lopez  
Hawaiian Cement

Gary North  
Chairman

Chair English, Vice Chair Gabbard, and Members of the  
Senate Committee on Transportation, International and  
Intergovernmental Affairs:

I am Gary North, testifying on behalf of the Hawaii Harbors  
Users Group (HHUG), on SB 1613, "A BILL FOR AN ACT  
RELATING TO THE DEPARTMENT OF TRANSPORTATION."

The Hawaii Harbor Users Group (HHUG) is a non-profit  
maritime transportation industry group comprised of the following key  
harbor users: Matson Navigation Company, Horizon Lines, LLC,  
Young Brothers/Hawaii Tug & Barge, Norwegian Cruse Line, Sause  
Brothers Inc., Aloha Cargo Transport (ACT), Hawaii Stevedores,  
McCabe Hamilton & Renny Stevedores, Hawaii Superferry, Tesoro  
Hawaii Corporation, The Gas Company, Ameron Hawaii, and  
Hawaiian Cement.

HHUG has serious reservations about this bill and, at a  
minimum, seeks to amend the legislation proposed to obtain  
indemnity from harbors users for all claims resulting from the use or

occupation of harbor land. HHUG does not question that harbor users should be responsible for damage or injuries arising out of their acts or negligence. However in situations in which the State has responsibilities, such as for the maintenance of the premises, HHUG believes that it is unfair and inappropriate for the State to obtain an indemnity if the State fails to perform the maintenance, or is otherwise negligent or responsible for the damage. We respectfully request that subsection (c) in Section 2 be amended as follows:

(c) The director of transportation may adopt rules pursuant to chapter 91 necessary to require any person who uses or occupies the commercial harbors, ports, roadsteads, harbor buildings, and other harbor facilities of the State, including but not limited to, the dock wharves, piers, quays, bulkheads, or landings thereon, to defend, indemnify, and hold harmless, the State and any of its agencies, officers, and employees from and against any liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or occupation if caused by the negligence or other fault, breach of contract, failure to comply with statutory or other legal duty of such person using or occupying the commercial harbors, ports, roadsteads, harbor buildings, and other harbor facilities of the State.

Thank you for this opportunity to testify.