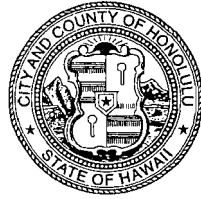


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February 6, 2006

The Honorable David Y. Ige, Chair
and Committee Members
Committee on Intergovernmental Affairs
The Senate
The Twenty-Third Legislature
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Ige and Committee Members:

Re: Opposition to Senate Bill No. 2584, Relating to Counties

The City and County of Honolulu does not support S.B. No. 2584. This bill seeks to amend HRS Section 46-72 to allow for notice of claims to the counties to be given within two years after the date of an incident, instead of the six-month requirement that is presently in the statute.

The six-month requirement is a policy matter; the purpose of the six-month notice requirement is to allow the counties to receive notice of a claim and to be able to timely investigate the matter claimed. Because the Counties rely on public funds to operate, it is critical that the Counties have all possible avenues to protect their scarce resources. Therefore, the six-month notice requirement for claims is critical for protection of the counties.

When the Counties are given notice of claims within six months of the occurrence of the incident giving rise to the claim, the Counties then become well-equipped to investigate those claims while the facts are fresh and the conditions related to the claims remain substantially the same.

The Honorable David Y. Ige, Chair
and Committee Members

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The matter of the six-month notice requirement was addressed in Oakley v. State, 54 Haw. 210, 215, 505 P.2d 1182, 1185-86 (1973), where the Court discussed the basic purpose underlying the notice requirements under HRS § 46-72 as follows:

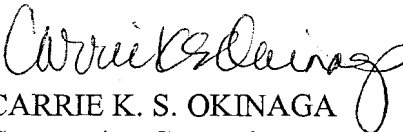
We believe that the basic purpose of the statutory requirement of filing a written notice of claim in the time specified, 'before the county shall be liable for damages to any person' (as in HRS § 46-72) or that 'no action shall be maintained for the recovery of damages for injury to any person' ... is to inform the municipal authorities 'when, where and how the injuries occurred, the extent thereof and the amount claimed therefor' to guard the municipality against fraudulent and unfounded claims and so that an investigation, while the facts are fresh and conditions remain substantially the same, can be made by the municipal officials as to the time, place and the conditions of the premises in order *to make a decision as to whether the case may be settled or tried*.

54 Haw. at 216-17, 505 P.2d at 1186 (emphasis added).

In other words, the intent of the statute is to assess the liability of the municipality, if any, and to settle the claim, if possible, before any unnecessary expenses are incurred in litigation. By changing the notice requirement to two years, the purpose for the notice is emasculated; claimants can file a notice and a lawsuit on the same day, including the last day of the two-year period.

We ask that S.B. No. 2584 be held in committee. Thank you for the opportunity to submit and your consideration of this testimony.

Sincerely,


CARRIE K. S. OKINAGA
Corporation Counsel

CKSO:li

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