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**A BILL FOR AN ACT**

RELATING TO ABOLITION OF JOINT AND SEVERAL LIABILITY FOR  
GOVERNMENT ENTITIES IN HIGHWAY-RELATED CIVIL ACTIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to amend section  
2 663-10.5, Hawaii Revised Statutes, to abolish joint and several  
3 liability for government entities in claims and cases relating  
4 to the maintenance and design of highways including actions  
5 involving guardrails, utility poles, street and directional  
6 signs, and any other highway-related device under chapter 663,  
7 Hawaii Revised Statutes, so that government entities would only  
8 be liable for the percentage share of the damages actually  
9 attributable to the government entities in any and all  
10 applicable claims and cases.

11           SECTION 2. Section 663-10.5, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13           "(a) Any other law to the contrary notwithstanding,  
14 including but not limited to sections 663-10.9, 663-11 to 663-  
15 13, 663-16, 663-17, and 663-31, in any case where a government  
16 entity is determined to be a tortfeasor along with one or more  
17 other tortfeasors, the government entity shall be liable for no

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1 more than that percentage share of the damages attributable to  
2 the government entity [~~7 provided that joint and several~~  
3 ~~liability shall be retained for tort claims relating to the~~  
4 ~~maintenance and design of highways pursuant to section 663-~~  
5 ~~10.9]~~."

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken.

8 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



11

BY REQUEST  
JAN 22 2024

# H.B. NO. 2349

**Report Title:**

Joint and Several Liability; Repeal; Government Entities;  
Highway-Related Civil Actions

**Description:**

Amends section 663-10.5, HRS, to abolish joint and several liability for government entities in claims and cases relating to the maintenance and design of highways under chapter 663, HRS, so that government entities are only liable in certain cases for the percentage share of the damages they actually caused.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO ABOLITION OF JOINT AND SEVERAL LIABILITY FOR GOVERNMENT ENTITIES IN HIGHWAY-RELATED CIVIL ACTIONS.

PURPOSE: To abolish joint and several liability for government entities in claims and cases relating to the maintenance and design of highways including actions involving guardrails, utility poles, street and directional signs, and any other highway-related device under chapter 663, HRS, so that government entities would only be liable for the percentage share of the damages actually attributable to the government entities in any and all applicable claims and cases.

MEANS: Amend section 663-10.5(a), HRS.

JUSTIFICATION: Section 663-10.5, HRS, was originally enacted to protect the public by preventing government entities from being held jointly and severally liable for the entire damages in cases in which the government entities bore minimal responsibility to causing those damages. However, in 2006, this statute was amended to carve out and insert an exception for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9, HRS, thereby exposing governmental entities to joint and several liability again.

The return of joint and several liability for government entities for tort claims relating to the maintenance and design of highways has undermined the original intent of section 663-10.5, HRS, and has since resulted in an unfair burden to the State's taxpayers as liabilities for the State have ended up being millions of dollars more than the State would otherwise have had to pay if limited by its proportionate share of fault.

This bill will restore the original intent of section 663-10.5, HRS, by eliminating the disparate treatment of claims relating to highways.

Section 663-10.9(4), HRS, currently allows for recovery of noneconomic damages in motor vehicle accident tort claims relating to the maintenance and design of highways upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstance.

However, the existence of just one prior accident is not an accurate, fair, or even relevant indicator of how government entities that maintain and design highways operate, monitor, or evaluate highway facilities for remediation. Instead, government entities such as the State employ engineering analyses and methodologies that are data driven and monitor for expected as well as excessive crash frequency to evaluate their transportation operations. The analyses and methodologies include those summarized by the American Association of State Highway and Transportation Officials Highway Safety Manual.

Section 663-10.9(4), HRS, would continue to address liability of non-government entities that maintain and design highways for government or private persons or entities.

Impact on the public: This bill will ensure that the State and its taxpayers are no longer overburdened with paying excessive millions of dollars in damages in judgments or settlements for highway-related injuries where the majority of fault is with another tortfeasor.

Impact on the department and other agencies: This bill will protect the general fund from excessive judgments for tort claims against the State relating to highway maintenance

and design, making the State responsible only for its proportionate share of damages.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION None.

OTHER AFFECTED AGENCIES: Department of Transportation and the Judiciary.

EFFECTIVE DATE: Upon approval.