STAND. COM. REP. NO. 355

Honolulu, Hawaii

APR 1 1 2006

RE: S.C.R. No. 94 S.D. 1

Honorable Robert Bunda President of the Senate Twenty-Third State Legislature Regular Session of 2006 State of Hawaii

Sir:

Your Committees on Judiciary and Hawaiian Affairs and Intergovernmental Affairs, to which was referred S.C.R. No. 94 entitled:

"SENATE CONCURRENT RESOLUTION ESTABLISHING A TASK FORCE TO EXAMINE THE ISSUE OF DISCRETIONARY FUNCTION EXCEPTION FOR OF THE STATE AND COUNTIES,"

beg leave to report as follows:

The purpose of this measure is to establish a task force to examine the issue of the discretionary function exception for the state and counties.

Your Committees received testimony in support of this measure from the Department of the Attorney General (Attorney General), the Department of Transportation, and the Department of the Corporation Counsel for the City and County of Honolulu. Consumer Lawyers of Hawaii submitted testimony in opposition to the measure.

Your Committees find that clarification is needed to determine whether the discretionary function exception under state law requires the State and counties to have the same protection from liability that the United States is afforded under federal law.

Your Committees have amended this measure in accordance with the testimony of Consumer Lawyers of Hawaii and based upon



discussions held during the hearing to change the composition of the task force's membership to:

- (1) The Attorney General or the Attorney General's designee;
- (2) A member from each county's executive branch;
- (3) One member of the Hawaii State Judiciary;
- (4) One faculty member from the University of Hawaii, William S. Richardson School of Law;
- (5) One member of the Hawaii State Bar Association who is primarily engaged in representing plaintiffs in cases against the State or counties, to be chosen by the president of the Hawaii State Bar Association;
- (6) One member from Consumer Lawyers of Hawaii;
- (7) One member from the Association of Trial Lawyers of America;
- (8) One member from the Hawaii Government Employees Association; and
- (9) One member from United Public Workers.

Your Committees note the request of the Attorney General that the scope of the task force's mission be expanded; however, based upon the complexity of the issues and the time limitations, your Committees believe it is best to retain the task force's mission as originally drafted.

As affirmed by the records of votes of the members of your Committees on Judiciary and Hawaiian Affairs and Intergovernmental Affairs that are attached to this report, your Committees concur with the intent and purpose of S.C.R. No. 94, as amended herein, and recommend its adoption in the form attached hereto as S.C.R. No. 94, S.D. 1.

Respectfully submitted on behalf of the members of the Committees on Judiciary and Hawaiian Affairs and Intergovernmental Affairs,

DAVID Y. KGE Chair

COLLEEN HANABUSA, Chair

The Senate Twenty-Third Legislature State of Hawaii

Record of Votes of the Committee on Judiciary and Hawaiian Affairs (Bills and Resolutions)

Measure:* SCR 94	Committee Referral: JHW/IGA		Date:	Date: 4/5/06			
The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to:							
The Recommendation is to:							
Pass, unamended Pass, with amendments Hold Recommit (2312) (2311) (2310) (2313)							
Members		Ayes	Ayes(WR)	Nays	Excused		
HANABUSA, Colleen (C)		√					
HEE, Clayton (VC)					.		
CHUN OAKLAND, Suzanne				San July Company			
ENGLISH, J. Kalani		7					
IHARA, Jr., Les					√		
WHALEN, Paul		V					
TOTAL		4	0	0	2		
Recommendation: Adopted Not Adopted							
Chair's or Designee's Signature: Anamu Chun Qallank							
Distribution: COriginal Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy							

^{*}Do <u>not</u> list more than one measure per Record of Votes.

The Senate Twenty-Third Legislature State of Hawaii

Record of Votes of the Committee on Intergovernmental Affairs (Bills and Resolutions)

Measure:* SCR 94	Committee Referral: JHW/IGA	Date	Date: 4/5 (2006				
The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to:							
The Recommendation is to:							
Pass, unamended Pass, with amendments Hold Recommit (2312) (2311) (2310) (2313)							
Members	Ay	es Ayes(WF	R) Nays	Excused			
IGE, David Y. (C)	✓						
KIM, Donna Mercado (VC)							
BAKER, Rosalyn H.				V			
ENGLISH, J. Kalani							
INOUYE, Lorraine R.		solution and a solution of the		 			
NISHIHARA, Clarence K.							
SLOM, Sam			2000 Interest Comment of the Comment				
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TOTAL	4			3			
Recommendation: Adopted			Not Adopted				
Chair's or Designee's Signature:							
Distribution : Original File with Committee	Yellow Report Clerk's Off			oldenrod tee File Copy			

^{*}Do not list more than one measure per Record of Votes.