

HB 1037

RELATING TO CIVIL ACTIONS

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FEBRUARY 2, 2009

Chair Souki and Members of the House Transportation Committee:

I am Ken Hiraki, Director of Government Relations, testifying on behalf of Hawaiian Telcom in opposition to HB 1037, "RELATING TO CIVIL ACTIONS."

Hawaiian Telcom cannot support this bill unless it is amended to clarify that public utilities are also exempt from joint and several liability. As currently drafted, this measure unfairly exempts the state and county government from joint and several liability in tort cases involving a public road or rights of way, without providing a similar exemption for public utilities. Without an exemption, this bill discriminates against public utilities by unfairly exposing utilities to assume greater risk and legal liability in tort lawsuits than what was originally intended under current law.

By way of background, Hawaiian Telcom utilizes the state and county roads and rights of way to provide telecommunication services to the public. In tort cases involving an accident involving a utility pole along the public roads and highways, utilities (joint owners of the pole—telephone, electric, cable) such as Hawaiian Telcom, are often sued together with the state or county government responsible for the highway. Should the state or county government become exempt from joint and several liability, by default plaintiffs will then target the only parties remaining such as utilities. As a practical matter, this disparate shift in liability means that a utility will end up paying more than its assigned share of liability despite the fact that it is usually the government

entity that determines where and under what conditions a utility pole may be placed along a road or highway.

The passage of this bill in this form will inevitably lead to increased lawsuits and expenses for utilities such as Hawaiian Telcom. As a matter of fairness, we request that HB 1037 be amended to include a public utility exemption from joint and several liability as follows :

"§663-10.5 Government entity as a tortfeasor; public utility as tortfeasor; abolition of joint and several liability. [Notwithstanding] Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and [section] 663-31, in any case where a government entity is determined to be a tortfeasor along with one or more other tortfeasors, the government entity shall be liable for no more than that percentage share of the damages attributable to the government entity. In any such case, where one of the other tortfeasors is a public utility, then, likewise, the public utility shall be liable for no more than that percentage share of the damages attributable to the public utility.

For purposes of this section, "government entity" means any unit of government in this State, including the State and any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government, or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county. For purposes of this section, "public utility" shall have the meaning set forth in section 269-1.

For purposes of this section, the liability of a government entity shall include its vicarious liability for the acts or omissions of its officers and employees."

Based on the aforementioned, unless the bill is amended to provide the same exemption from joint and several liability as provided to state and county governments, Hawaiian Telcom is opposed to the passage of HB 1037 .

Thank you for the opportunity to testify.