

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

WRITTEN TESTIMONY ONLY

SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS

**SENATOR J. KALANI ENGLISH, CHAIR
SENATOR MIKE GABBARD, VICE CHAIR**

**HOUSE BILL NO. 1163, HD 2
scheduled for hearing on March 18, 2009, 1:45 p.m.**

**TESTIMONY OF GARY NORTH
Chairman, Hawaii Harbors Users Group**

Chair English, Vice Chair Gabbard, and Members of the House
Committee on Transportation:

Thank you for this opportunity to present testimony on HB
1163, HD 2 on behalf of the Hawaii Harbor Users Group (HHUG).

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 Cruise 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.

This bill seeks to give the Department of Transportation (DOT)
authority to pass rules requiring users or occupiers of harbor property
to indemnify the State under a broad array of situations. HHUG does
not support this bill in its present form. HHUG has been working with
DOT-Harbors on a mutually acceptable amendment; however we

have not yet reached agreement. This is a complex bill that may have ultimately have large impacts on the manner in which risk and liability are apportioned amongst those who own, lease and/or use State harbor space.

HHUG does not question that harbor users should be responsible for damage or injuries arising out of their acts or negligence. However, this bill needs much closer review with respect to at least two issues. First, in situations in which the State has responsibilities, such as for the maintenance of harbor premises, HHUG believes that it is unfair and inappropriate for the State to obtain indemnity if the State fails to perform such maintenance or is otherwise negligent or responsible for the damage. Second, this bill appears to give DOT-H an avenue to depart from rules regarding liability under federal law and, although it is unclear whether this would be enforceable from a legal standpoint (involving issues such federal preemption), this bill may also have implications for the exclusive remedy protection for an employer (who may also be a user or occupier of harbor property) under the federal Longshore and Harbor Workers' Compensation Act. In any case, these are complex issues that are not subject to quick analysis and we respectfully suggest that any legislation needs to be clear with respect to the issues and situations it will impact.

In order to allow and encourage continued discussion between DOT-H and industry representatives, including HHUG, the House Judiciary Committee amended HB 1163 (in HD1) "[c]hanging its effective date to July 1, 2046, to encourage further discussion" (as noted in Stand. Com. Rep No. 566). We respectfully request that this Committee retain this date to encourage this further discussion to continue.

Thank you for this opportunity to testify.